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Supreme Court of the United States.

OCTOBER TERM, 1895.

AUGUSTUS R. S. FOOTE, *et al.*, *vs.* THE WOMEN'S BOARD OF MISSIONS, *et als.*	No. 207. ERROR TO THE SUPERIOR COURT FOR NEW HAVEN COUNTY, CONNECTICUT.

STATEMENT.

This case turns upon the construction to be given to the Act of Congress of March 3, 1891, appropriating money for the payment of certain French Spoliation claims, agreeably to the findings of the Court of Claims.

In 1797, the firm of Leffingwell & Pierrepont owned the ship Confederacy, which was seized by a French privateer in June of that year, and became the subject of a "French Spoliation claim." William Leffingwell, the senior partner, lived in New Haven, Connecticut, and died testate, in 1834. His estate was finally settled in

1844, and no mention of his interest in this claim was made in his will, or in the distribution of his estate. (Record, pp. 12–17).

The surviving partner lived in Brooklyn, New York, and died, testate, in 1838. His executor presented the claim of the firm to the Court of Claims, in 1886, and a favorable decision was secured in 1888.

In 1886, administration *de bonis non* on William Leffingwell's estate, was taken out by Oliver S. White, in the Court of Probate for the District of New Haven in Connecticut, in order to collect his interest in the claim, and the administrator has received from the representatives of the surviving partner half the net proceeds of the Court of Claims award.

The only question on this writ of error is as to who are beneficially entitled to this money.

The Probate Court having jurisdiction of the estate of William Leffingwell, in settling the account of the administrator *de bonis non*, treated the fund as part of the residuary estate of the testator; and ordered its distribution to the residuary legatees under his will, and their representatives or successors. An appeal was taken to the Superior Court, but in conformity to the advice of the Supreme Court of Errors, it affirmed the decree of the Court of Probate. (Appendix to Record, p. 1).

The plaintiffs in error claim that by the true construction of the Act of Congress of March 3, 1891, the money belonged to the next of kin of William Leffingwell, as they existed at the date of the Act, and that the State Courts erred in not giving to this Act its due effect.

The judgment of the Superior Court simply affirmed the decree of distribution made by the Court of Probate which was made on March 9th, 1892.

This Probate decree ordered the fund in question, amounting to about $75,000, distributed among the five residuary legatees named in the will of William Leffingwell, "according to law and said will, as follows * * * one-fifth thereof to the executors or administrators of Caroline Street, a daughter of said deceased," &c., &c., (Record, p. 4).

The plaintiffs in error are grandchildren and the only living descendants of Caroline Street, and are among the next of kin of William Leffingwell, who were living at the date of the approval of the Act of Congress of March 3d, 1891.

Before proceeding to final judgment the Superior Court made a finding of facts, and reserved the case for the advice of the highest Court in the State, the Supreme Court of Errors, whose advice, upon such a reservation, is mandatory in effect. This reservation embraced four appeals from Probate, taken by various parties to the Probate proceedings. The Supreme Court of Errors advised the affirmance of the Probate decree as respects all the appellants. Only one of these appeals is brought up by this writ of error, but the appellants in the other three cases have been all made defendants in error.

Caroline Street died testate and solvent in 1878. If the fund in question is general assets of her estate, it goes to the residuary legatee under her will, the Women's Board

of Missions. Otherwise it belongs to the plaintiffs in error, as through her, the next of kin of William Leffingwell, on one line of descent.

Of the numerous defendants in error only one, the Women's Board of Missions, contests the construction of the Act for which we contend.

I.

Specifications of Error.

1. Said funds received by said Oliver S. White, administrator, were received by him as representing the next of kin of said William Leffingwell, and were not received by him as assets of the estate of said William Leffingwell.

2. Said balance of said funds belongs of right to these plaintiffs in error, and the other next of kin of said William Leffingwell, to be shared among them *per stirpes.*

3. Said funds which formed the subject of said accounting were received by said Oliver S. White, administrator, from the administrator *de bonis non* of the estate of Hezekiah B. Pierrepont, deceased, the last surviving partner of the firm of Leffingwell & Pierrepont, of which firm said William Leffingwell was the other partner, as half of the net sum received by said administrator under a certain appropriation made by the Congress of the United States on March 3, 1891, "to pay the findings of the Court of Claims on a claim for indemnity for spolia-

tions by the French prior to July thirty-first, eighteen hundred and one, under the act entitled 'An act to provide for the ascertainment of claims of American citizens for spoliations committed by the French prior to the thirty-first day of July, eighteen hundred and one,'" (26 U. S. Stat. at Large, p. 897), to wit, out of an appropriation made to pay such a claim for such spoliation of the ship Confederacy, (*ibid.*, p. 903), owned by said firm; and said appropriation was one of many made in said act to sundry claimants on account of similar spoliations; and the Rhode Island Hospital Trust Company (*ibid.*, p. 902) and other corporations were among said claimants; and the act making all said appropriations contained the proviso that (*ibid.*, p. 908) "the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represents the next of kin"; and such a certificate was made by said Court to the Secretary of the Treasury as respects said award for the spoliations on the ship Confederacy; and so said judgment should have ordered payment of their part of said fund, to wit, 3-17, to the plaintiffs in error as next of kin of said William Leffingwell, deceased, instead of affirming said decree of probate.

4. These plaintiffs in error are entitled, as the next of kin of William Leffingwell, on March 3, 1891, when said act was passed, to their due share *per stirpes* of said balance of said account, to wit, one-third thereof, there be-

of Missions. Otherwise it belongs to the plaintiffs in error, as through her, the next of kin of William Leffingwell, on one line of descent.

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4. These plaintiffs in error are entitled, as the next of kin of William Leffingwell, on March 3, 1891, when said act was passed, to their due share *per stirpes* of said balance of said account, to wit, one-third thereof, there be-

ing only three of the five children of the testator who survived him whose descendants were living on March 3, 1891.

5. By virtue of said act of Congress, approved March 3, 1891, making said appropriations, the plaintiffs in error, as next of kin of William Leffingwell, have a right to part, to wit, one-third of said balance in the hands of said Oliver S. White, administrator, and said decree ought to have ordered distribution of the same to them.

6. Said judgment of said Superior Court denies to the plaintiffs in error a right secured to them by said act of Congress of March 3, 1891, to a share in said fund derived from the appropriation made in said act, the same being made in legal effect, as to half of said fund, to or for the next of kin of William Leffingwell, living at said date, of whom the plaintiffs in error represent one line of descent.

BRIEF OF ARGUMENT.

I.

The intent of Congress, not the validity of the claim, must govern the decision.

The argument was pressed in the Court below that these French Spoliation claims were valid obligations of the United States, and that because they were such, they necessarily constituted assets of the original sufferers, and

the fund here in dispute was assets of William Leffingwell's estate.

We submit that the question whether the claims were valid obligations of the United States is entirely immaterial.

The question presented by this writ of error is whether Congress has directed the disposition of a certain fund of $160,000, and, if so, whether such direction has been obeyed by the Courts of Connecticut.

If the claim of the firm of Leffingwell & Pierrepont, and those who have now succeeded in interest, to that fund, be a valid obligation of the United States, it may be that it would have been more orderly and becoming, had Congress simply directed payment of its appropriation to the estate of the surviving partner. But Congress has in fact done something else.

If the claim was not a valid one, Congress could, of course, make any payment which it thought proper to order, to whomsoever it pleased.

It could do the same if it was a valid one. If it has ordered money due on a valid obligation of the United States to be paid to some one not properly representing the creditor, the obligation remains still due to those who do properly represent him, but this cannot make it lawful for the former, after accepting the fund, to dispose of it otherwise than as Congress has provided.

II.

Congress meant that the "next of kin" should get the money.

The decision of this case turns on a single point,—the proper construction of the Act of Congress, under which the money has been received.

If that Act gave it for the benefit of the next of kin of the original sufferers, the plaintiffs in error are entitled to a third of the fund of $75,000 which is in question, as representing one of the three lines of his surviving descendants. If it was intended simply to provide for the payment of a debt due to William Leffingwell, without more, which debt was part of the general assets of his estate, the Probate decree was properly affirmed by the Superior Court.

No bill had been passed by Congress before 1885, recognizing the French Spoliation Claims.

On January 20, 1885, an Act was passed entitled, "An Act to provide for the ascertainment of Claims of American Citizens for Spoliations committed by the French, prior to the thirty-first day of July, eighteen hundred and one."

23 U. S. Stat., 283.

This Act provided that "such citizens of the United States or their legal representatives as had valid claims to indemnity upon the French Government arising out of illegal captures," etc., prior to the ratification of the

convention between the United States and the French Republic of September 30, 1800, ratified July 31, 1801, might apply by petition within two years, to the Court of Claims, and that that Court should examine and determine the validity and amount of all such claims "together with their present ownership, and if by assignee, the date of assignment, with the consideration paid therefor." It was also provided that the Court should decide "upon the validity of said claims according to the rules of law municipal and international, and the treaties of the United States applicable to the same," and should report such conclusions of fact and law as in their judgment might affect the liability of the United States therefor. Section 6 of this Act provided that the Court should annually report to Congress "for final action the facts found by it and its conclusions in all cases which it has disposed of, and not previously reported." Such finding and report of the Court should be "taken to be merely advisory as to the law and facts found," and should "not conclude either the claimant or Congress; and all claims not finally presented to said Court within the period of two years limited by this Act, shall be forever barred, and nothing in this Act shall be construed as committing the United States to the payment of any such claims."

It will be observed that so far as the validity of the claims is concerned, the Court of Claims was limited to the inquiry whether they were "valid claims to indemnity upon the French Government." It had nothing to do as respects ascertaining their validity as against the United States.

The next year the legislature of Connecticut passed a statute to facilitate the presentation of claims under this Act of Congress. This is Sec. 567 of the General Statutes, Revision of 1888, and is as follows:

"SEC. 567. Whenever it shall appear that any resident of this State had at the time of his death any claims against the United States Government of the class commonly known as the French spoliation claims, the Court of Probate which now has jurisdiction over the district where such person resided at the time of his death may, on application of any person claiming to be interested in such claim, appoint an administrator upon the estate of said original claimant, whether administration has been heretofore granted thereon or not, and whether there be an administrator or administrators now living and capable of acting, to whom administration has been granted thereon or not, without requiring the resignation of such administrator or administrators who may be living, to the end and purpose only of taking all proper and reasonable measures to prosecute and collect such claims and dispose of the proceeds thereof according to law. But before any such appointment shall be made, such Court of Probate shall order public notice of the pendency of the application and of the time and place fixed for the hearing upon the same, to be given in such manner as said Court shall find most likely to furnish information thereof to the persons interested in such claims."

On March 3, 1891, upon the favorable report of the Court of Claims, Congress appropriated the necessary sum to pay this Leffingwell & Pierrepont claim, among other "findings" of the Court of Claims on the "following claims for indemnity for spoliations by the French," under the Act of 1885, already referred to.

26 U. S. Stat., 897.

The claim in question was described in this Act as follows:

"On the Ship Confederacy, Scott Jenckes, Master, namely: Henry E. Pierrepont, executor of the will of Hezekiah B. Pierrepont the last surviving partner, (deceased), of the firm of Leffingwell & Pierrepont, one hundred and sixty thousand four hundred and seventy-eight dollars and twenty-nine cents."

The other claims, provided for in a similar manner, brought the whole appropriation up to an amount over $1,300,000, and at the conclusion of this Act was the following proviso, which governs the determination of this case:

"*Provided*, that in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin, instead of to assignees in bankruptcy; and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives, on whose behalf the award is made, represents the next of kin; and the Courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards."

This proviso meant something. What it meant in the case of adjudicated bankrupts is evident. It was to exclude their assignees from succession. Unless the residue of the proviso was meant to secure some valuable right of succession to the next of kin of all individual claimants, who had not been adjudicated bankrupts, why was it inserted in the Act? An administrator always represents

the next of kin. But the trouble is that the ordinary administrator also represents legatees and creditors. Why, also, was Congress so studious to require proof that those receiving the awards had given adequate security for their legal disbursement? This is not naturally referable to the ordinary Probate bonds for fidelity in settling the estate. It looks solely to security for the disbursement of this particular fund according to the law determining its ownership, that is, the previous provisions of the Act. The security was to be certified to by the Probate Court which granted the administration, but it was not required that the Probate Court should ever order or regulate the disbursement of the fund. The law did that.

It will be observed that the administration to be granted under this statute is of a special and peculiar character. It may be granted even if there be an ordinary administrator on the estate living, and capable of acting. The special administrator is to be appointed for the sole purpose of prosecuting and collecting the claims and disposing of the proceeds thereof, "according to law."

Under this statute, Oliver S. White was appointed in 1887, (Record, p. 34), administrator, *de bonis non*, of the estate of William Leffingwell, by the Probate Court for the District of New Haven, "for the sole purpose and end of taking all proper and reasonable measures to prosecute and collect certain claims against the United States, commonly known as the French Spoliation claims."

The executor of the surviving partner of the firm of

Leffingwell and Pierrepont had already brought his suit in the Court of Claims, and a copy of Mr. White's letters was filed immediately in the cause, (Record, p. 18.)

The French Spoliation claims were not in 1885, or in 1834, when William Leffingwell died, nor at any time have they been legal claims against the United States. Some of them had been valid claims for indemnity upon France. If these had ever become valid claims against the United States, it was because the United States had assumed by a treaty with France the obligations of France.

But this was a question over which no Court had jurisdiction. It belonged to a class as to which the jurisdiction of the Court of Claims was expressly excluded. U. S. Rev. Stat., § 1066.

Great Western Insurance Co. v. *United States*, 112 U. S., 193.

Congress had never recognized the validity of any of these claims as against the United States, and the Executive Department had frequently denied it.

The position of the United States, so far as governmental acts and declarations were concerned, had been consistently this: that by their treaty with France in 1803, (Vol. 2, U. S. Rev. Stat., containing the Public Treaties of the United States, p. 236), they had indeed agreed to pay certain claims to their citizens existing against France; but that the French Spoliation claims

were not among those included under that treaty, nor in the earlier one of 1800.

Wharton's International Law Digest, Vol. 2, Section 248, pp. 714–728.

Not only had the United States always disputed their liability to pay them, but the Act of 1885, itself, far from admitting their validity, expressly provided that nothing therein should be construed as committing the United States to the payment of any of them.

The claims therefore, cannot be regarded for the purposes of this suit, and against the United States, as matters of legal right.

In the opinion of the Supreme Court of Errors of Connecticut, the position is taken (Record, p. 54, fol. 77), that because twenty favorable reports had been made from time to time by Congressional committees, recommending their payment it may be "pretty safely assumed that Congress intended to do that which these reports recommended—that is, to pay debts equitably due to the claimants from the United States."

We respectfully submit that this view fails to take into consideration the express terms of the legislation of 1891. Congress certainly did not regard any of these claims as assets in case of a bankrupt. That is explicitly provided for. Can it be assumed that they were undertaking to divert assets from creditors in favor of relatives? On the contrary they were disposing of a gratuity.

Emerson v. *Hall*, 13 Pet., 409.

On no other ground can the refusal of Congress to appropriate funds to pay so many claims of the same kind, in favor of corporations, for which the Court of Claims recommended awards, be justified.

Gray v. *The United States*, 21 Court of Claims, 340.

The losers by the French spoliations are represented in interest through corporations better than is possible in any other way. Corporations are simply men, women and children, grouped under a common name, and continuing in legal existence in unbroken succession. To every corporation which lost a thousand dollars by a French capture there came a shrinkage of a thousand dollars in value of the corporate assets, and a proportionate lessening in value of every share of stock, to be made up only in case compensation for the loss should be ever received. Such compensation was hoped for from the United States. Whoever now owns this stock took it with whatever value this hope gave it, paying so much more for it, or having it distributed to him at so much more, because of this. The very being that sustained the loss is still present to receive reparation. Congress would not have failed to make it, had they intended to discharge debts to the original owners of the claims. If they meant to add to the estates of the original sufferers, every principle of justice would have required payments to corporations and natural persons on equal terms. That they adopted a different course is strong evidence that

they intended by these appropriations to give, and not to liquidate; to give to the living relatives of those whom France had wronged, and not to heirs, creditors or legatees of their dead relatives.

A precedent of some value is to be found in the awards made to sufferers by the depredations of the Southern cruiser, *Alabama*. In distributing the Geneva award, Congress excluded claims for losses which had been covered by insurance, and also claims of the insurance companies, for the payments so made to the sufferers. It was held by the English Courts that Congress distributed the money as a gratuity, and not as a matter of right, and hence that the recipients could not be charged with any lien or trust in favor of others who might have been the real sufferers.

Burnand v. *Rodocanachi*, L. R., 7 Appeal Cases, 333, 336.

It was held also in several of the State Courts, that no title to awards passed to creditors or assignees in bankruptcy.

Brooks v. *Ahrens*, 68 Md., 212; 12 Atl., 19.

Kingsbury v. *Mattocks*, 81 Me., 310; 17 Atl., 126.

Taft v. *Marsily*, 120 N. Y., 474; 24 North East., 926.

This Court afterwards held that as the money came

directly from a foreign power, our Government took it, impressed with a moral obligation, and could not rightly dispose of it as a mere gratuity.

Williams v. *Heard*, 140 U. S., 529.

But the difference between that case and this is that there a cash fund was actually paid over to our Government, to be paid over by it to parties whose claims our Government had recognized and insisted on as the basis of the award. In the case at bar, our Government had steadily denied the validity of the claims for French Spoliations, up to March 3, 1891, and there was no fund provided by others with which to pay them.

The Brig Hiram, 24 Court of Claims, Rep. 31.

In the former case also, the Act of June 5, 1882, under which the claims were adjudicated upon, expressly gave the Court of Commissioners of Alabama Claims, power to render "judgments," and provided for their payment in ordinary course, when rendered, to the extent of the fund in hand.

22 Stat., 98.

Until the Act of 1891, the awards of the Court of Claims in French Spoliation cases were nothing but bare recommendations. They gave no title, and changed no title.

Slidell v. *Grandjean*, 111 U. S., 412, 429.

They were "neither judgments nor final awards, but simply the determination of abstract rights for the information and guidance of Congress."

Durkee v. *United States*, 28 Court of Claims, 326, 329.

This Act, however, imposed on that Court the duty of certifying when they found that a valid claim existed in favor of personal representatives, that they "represented the next of kin of the original sufferer."

Ibid, 330.

The granting of such a certificate involved an important judicial act, determining particular rights of parties to the proceeding.

Congress could only have called upon the Court for such an adjudication on the ground that as any appropriation for these claims would be a gratuity from the United States, payment and distribution were to be made to those parties whom the legislative department intended to benefit by the awards.

The provision of the Act of 1885, that the Court of Claims should report to Congress the present ownership of every claim, and in case of any assignment, the date of the assignment and the consideration paid for it, show that Congress did not then deem assignees of claims to stand on the same footing as the original claimants, but intended by subsequent legislation, should they deem fit

to appropriate money for the payment of any claim, to distinguish between assignees, and original owners or their descendants.

By the Act of 1891, under which the money now in question was awarded, Congress, in pursuance of this policy, in the first place gave the amounts awarded, where the original sufferers were bankrupts, not to their assignees in bankruptcy, to whom legal claims would necessarily have gone, (*Phelps* v. *McDonald*, 99 U. S., 298; *Comegys* v. *Vasse*, 1 Peters, 193), but to their next of kin; and then provided generally that the awards in cases of individual claimants, should be paid only to personal representatives, representing the next of kin; and who had given adequate security for the legal disbursement of the awards, i. e., their disbursement among those legally entitled to them under, first, the laws of the United States, and second—so far as they were applicable, the laws of the State of domicil.

The term "individual claimants" is here plainly used to distinguish individuals from corporations or receivers.

There were many awards recommended by the Court of Claims to corporation claimants. The Rhode Island Hospital Society was the assignee of an insolvent Marine Insurance Co., which had insured some of the captured vessels, and a number of claims were allowed by the Court in its favor.

Most of these awards to or for corporations were not confirmed by Congress, but for a few the money was appropriated, as in the case of *The Ranger*.

In the case of the Schooner *Mary*, such an award was made, and in the appropriation to pay it, one of the claimants is thus named:

"The Rhode Island Hospital Trust Company, three thousand three hundred dollars."

26 Stat., 902.

In the case of the Brig *Mary*, an appropriation was made to

"John Stewart, receiver of the Baltimore Insurance Company, eleven thousand dollars."

26 Stat., 905.

The same receiver received $12,860, on account of the Schooner *Emily*.

26 Stat., 907.

Of course any provision for the next of kin of a corporation or of a receiver of a corporation would be inappropriate, and hence the extension of the proviso to "individual claimants."

The Court of Claims has repeatedly held that the Act of March 3, 1891, by its proviso, marked out as the only parties entitled to an award, in the case of individual claimants, personal representatives who "represent per-

sons entitled to relief—that is to say, the next of kin of the original sufferer."

Durkee v. *United States*, 28 Court of Claims, 326, 330, 332.
The Ship Concord, 27 Court of Claims, 142.
The Brig Clio, 27 Court of Claims, 221.

Leave to come in as a petitioner, was therefore refused to an administrator of the sole legatee of an original sufferer, who left no next of kin, but whose will disposed of all his property including "money to be recovered due me," though the legatee was also his widow and legal heir.

Durkee v. *United States*, 28 Court of Claims, 326, 330.

On the other hand, where the next of kin are really represented by the administrator, that Court has not refused a certificate, although he be an administrator *cum testamento annexo*, and also represents a stranger as the residuary legatee. In such a case, the certificate that the petitioner represents the next of kin is granted, on the ground that the final determination of a right to these statutory awards is not within the jurisdiction of that Court, and most certainly cannot be made on an *ex parte* application for authority to receive a payment, the ben-

eficial right to which may be afterward contested in the proper Probate Court.

Hooper v. *United States*, 28 Court of Claims, 480, 482.

Van Wagenen v. *United States*, 25 Court of Claims, 110, 113.

Buchanan v. *United States*, 24 Court of Claims, 74, 81.

In determining whether such a certificate should issue, the Court of Claims also holds that the record of a grant of administration does not necessarily show that the administrator represents the next of kin, but that this must be proved, as was done in the case at bar, (Record, pp. 27, 29. 31), by extrinsic evidence.

Eldridge v. *United States*, 26 Court of Claims, 253.

This leaves it to a Court of Probate having jurisdiction of the administration, to determine primarily under the laws applicable to the case to whom the funds should be distributed. The first and paramount law on the subject, is the Act of March 3, 1891, under which the funds were derived.

The object of Congress in recognizing these claims was to benefit the original sufferers, if living; otherwise their next of kin. The particular expressions in the statute must be read in the light of its general intent. This

could not have been merely to protect the next of kin against claims of assignees in bankruptcy. Assignees or trustees in insolvency under State insolvent laws, and receivers and administrators, appointed in the interest of creditors on an insolvent estate, were equally within the mischief to be averted. That in this particular case, the estate is solvent, can make no difference in the meaning of the Act, which must be liberally interpreted to avert the mischief in view.

"Such construction ought to be put upon a statute as may best answer the intention which the makers had in view. And this intention is sometimes to be collected from the cause or necessity of making the statute, and sometimes from other circumstances; and whenever such intention can be discovered, it ought to be followed with reason and discretion, in the construction of the statute, although such construction seem contrary to the letter of the statute. Where any words are obscure or doubtful, the intention of the legislature is to be resorted to in order to find the meaning of the words. A thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute, is not within the statute, unless it be within the intention of the makers."

The People v. *Utica Ins. Co*, 15 Johns. Rep., 358, 380, 381.

Congress did not design to benefit creditors or assignees in bankruptcy, or assignees of any sort, unless perhaps the assignment had been made by the original claimants for a full consideration. This is sufficiently indicated by

the Act of 1885, construed in connection with that of 1891.

Congress, in another Act passed the day before (March 2, 1891) had occasion to deal with a similar subject, and the terms there used show what terms would be used to make a different disposition of a gratuity, where it was intended to benefit devisees.

The Act refunding the direct taxes to the States which paid them during the Civil War, provides that if any of the original collections were by sale of property on State tax warrants, the amounts refunded on that account shall be held by the State in trust for the original owners of property sold "or their legal representatives."

26 U. S. Stat., 822.

Evidently here "legal representatives" means executors, or administrators.

So this Act in providing for re-imbursing owners of land sold by the United States, to pay these taxes, in South Carolina, gives the money to the "legal owner," or "the heir at law or devisee of the legal owner of such lands;" and, in providing for soldiers in our army who bought such lands at tax sales, and afterwards lost them, makes the money given them payable to them "or to their heirs at law, devisees or grantees in good faith, and for valuable consideration."

26 U. S. Stat., 823.

The intent of the proviso to the Act of 1891, is that the

next of kin shall have the money, and not the legal representatives of the estate, except as collecting and distributing agencies.

Moore, deceased, v. *The United States*, 26 Court of Claims, 255.

A will is a recognized instrument of conveyance at common law.

Marcy v. *Marcy*, 32 Conn., 308, 316.

Legatees and devisees come under the legal appellation of assignees or assigns. They are voluntary assignees, paying no consideration. It was not to protect any such class of assignees, whether by will or conveyance *inter vivos*, that this appropriation was made.

A legislative construction was put upon this proviso in the Act of March 3, 1891, by an Act of similar character, of March 3, 1893.

William Milligan, administrator of George Wattles, deceased, who was an original sufferer, had secured a finding of the Court of Claims in his favor, and an appropriation was made to pay the claim by the Act of March 3, 1891. (26 Stat., p. 904). The Court of Claims, however, refused to give him a certificate that he represented the next of kin for the very good reason that there were none surviving. He had really presented the claim for the benefit of the surviving next of kin of the widow of George Wattles. The Act of 1893 amends the Act of

1891 by adding to the appropriation in his favor these words:

"And the award in this case shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representative on whose behalf the award is made represents the next of kin, or in the event the Court shall find there were no next of kin, and that there is a widow, then that such widow is so represented. Ending June thirteenth, eighteen hundred and ninety-one, and for prior years, and for other purposes, (*sic*) to be paid to the person or persons entitled to recover and receive the same, to be ascertained by the Court of Claims upon sufficient evidence, and certified to the Secretary of the Treasury." Stat. at Large for 1893, p. 674.

Evidently, in this case of Milligan, Congress did not intend, and we may fairly assume, had never intended, that his estate should get the appropriation, instead of his next of kin. His widow was presumably entitled to succeed to part or all of his personalty if he left no next of kin, but it was thought proper to provide for her, or her representatives, by special legislation, which was clearly in the nature of the distribution of a gratuity.

Could it fairly be claimed that a State could impose a collateral inheritance or succession tax of any kind on the moneys thus appropriated by Congress? Yet if they form part of the estate of the original sufferer, they would certainly be thus taxable.

In reviewing the history and object of the Act, the Court of Claims has held that the intent of the proviso was to confine the benefit of the appropriations to the

families of the original sufferers, so that speculators, claim agents, creditors, &c., would get nothing, and that Congress was "finally entitled to decide who are equitably entitled to participate in this fund."

Buchanan v. *United States*, 24 Court of Claims, 74.

Adams v. *United States*, 26 Court of Claims, 249.

We submit that neither the residuary legatees of William Leffingwell, nor those claiming under wills of his descendants, have any title to this fund. At the time of his decease it was more than doubtful whether anything would ever be paid to anybody on account of the loss of the ship, *Confederacy*, and probable that if anything were paid, it would be paid to provide for the living and not the dead.

Had William Leffingwell regarded this claim for over $160,000 as a legal one, he would naturally have disposed of his half interest in it by his will, and it would have been distributed as part of his residuary personal estate. Had Mrs. Street, the grandmother of the plaintiffs in error, considered it as an asset of her father's estate in which she had an interest as a residuary legatee, to the amount of $16,000, she would naturally have referred to it in her will.

But the truth was that the known policy of Congress, in regard to all cases of unliquidated and uncertain demands against the United States, made it highly im-

probable that these French Spoliation claims, if ever paid, would be treated as if they had been property of the original sufferers, after their decease.

A case quite similar to the present one came up in Maryland on a bill of interpleader by the administrator *de bonis non*, with the will annexed, of Samuel Hollingsworth, an original sufferer. Like William Leffingwell, he had made a residuary bequest to his children. We quote from the opinion of the Court, in deciding as to the title to the fund.

"It is claimed on the one side, by the residuary legatees under the will of Samuel Hollingsworth, and on the other, by his next of kin, living at the time the appropriation was made.

Whether or not the payment of what is called a "French Spoliation Claim," under the Act above referred to, is to be treated as a mere gratuity from the Government of the United States, to the claimant, or as the liquidation of a *debt* due by the government, which, while not enforceable by suit under the municipal law, is yet under the broader principles of international law, a debt in full legal sense, (except as to its enforceability by suit), and, therefore, property (*Comegys* v. *Vasse*, 1 Peters, 193), and distributable as assets in the hands of an administrator and capable of being specifically bequeathed, (*Williams* v. *Heard*, 140 U. S., 529), does not seem to me to be an important inquiry in this case.

For no matter which of these views of the nature of the claim may be adopted, it would seem to be clear that when Congress makes an award and an appropriation for the payment of a claim, the money can only be distributed to those to whom Congress has directed it to be paid. If the real owners of the claim have not been provided for, they must look to Congress for a correction of the wrong;

but when it is simply a question of the distribution of a certain sum which Congress has appropriated to be paid to certain parties, this Court is bound to distribute it among those contemplated by the Act; and cannot undertake to remedy the supposed injustice, and defeat the intention of Congress, by giving it to those not embraced within the designated class of beneficiaries.

Now, in the Act referred to, after making the appropriation, it is provided 'that in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made *on behalf of the next of kin instead of assignees in bankruptcy*, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the secretary of the treasury that the *personal representatives on whose behalf the award is made, represent the next of kin*, and the Courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards.'

From this provision it would seem to be clear that Congress intended that the money thus appropriated should go to the next of kin of the original claimants, who were living at the time when the appropriation was made; and was not to be considered as belonging to the estate of the original claimant, and consequently assets for the payment of debts, or subject to be disposed of by will in the discretion of the testator. If the money was subject to testamentary disposition by the original claimant, he could have made any person or corporation his beneficiaries, although in this particular case he named his daughters; and thus the fund might pass to entire strangers in blood, or to charitable or other corporations, and in *any event* would have been liable to his debts, or the debts of his legatees, if any such debts should happen to be alive at the time the award was made. Against this result, Congress seems to have carefully guarded by the provision referred to. It certainly implies, if it does not in terms express, an absolute prohibition against the fund passing

to creditors *in any event*, a result entirely possible if it is to be considered a subject of testamentary disposition; and the further provision that the Court of Claims shall certify to the secretary of the treasury, by whom the money is to be paid, 'that the *personal representatives in whose behalf* the *award* is made, *represent the next of kin*,' seems to me to leave no doubt that the award was made to the personal representatives for the purpose of vesting it in the next of kin, and in them alone. Any other construction would defeat the manifest intention of the Act."

Carey v. *Morris*, Circuit Court, Baltimore Co., Md., 1892; 49 Phila., Legal Intelligencer, 147, April 8, 1892.

A different view of the meaning of the Act of Congress was taken by the Supreme Judicial Court of Massachusetts in the case of *Balch* v *Blagge*, 157 Mass., 144; 31 Northeastern Rep., 764, and has since induced them to assume the position that the awards constituted part of the estate of the original sufferer, and passed as such under his will. *Codman* v. *Brooks*, 159 Mass., 477; 34 Northeastern Rep., 689, (The Chief Justice and one of the Associate Justices dissenting.) Each of these cases is now before this Court on a writ of error. The latter case refers for authority, to the decision of the Supreme Court of Errors of Connecticut, in the case at bar, Leffingwell's Appeal, 62 Conn., 347; 25 Atlantic Rep., 453; and to *In re* Clement's Estate, 150 Pa. St., 85; 24 Atlantic Reporter, 631. Leffingwell's Appeal, in turn, relies for authorities on *Balch* v. *Blagge* and *In re* Clement's Estate. (Record, pp. 55, 56.) But *In re* Clement's Estate has since been squarely overruled, on

an appeal from the decree of distribution in the matter of the same estate. The Supreme Court of Pennsylvania frankly said that the ground they had taken was untenable, and adopted instead the position here contended for. After saying that a more careful review of the legislation of Congress satisfied them that "the fund was a pure gratuity from Congress, though it had a moral claim back of it that was the moving cause of the gift," the following language is used with reference to the particular point now under consideration:

"There was no right in any one which could be enforced, or which had any recognition at all in law. Congress, therefore, in making the gift, was free to make it to whomsoever it chose, and upon whatsoever terms.

It was made to the next of kin, and the intent that it should go to them in their own right, as standing in the place of the original claimant, is apparent throughout this Act, as well as the preliminary Act of 1885. Assignees in bankruptcy were expressly excluded, and the personal representatives were not to get the money until it should be certified to the Secretary of the Treasury that they represented the next of kin. By unquestionable implication all other parties, assignees, devisees, residuary legatees, widows, surviving husbands, etc., are also excluded. The right to the fund accrued in 1891 to those who were then the next of kin. That was the inception of the right, and those who were then dead never acquired any interest of any kind in the fund, and of course could transmit none by will or otherwise. It never was in fact part of Jacob Clement's estate, nor of his children's, nor of his grandchildren's, who died before 1891. Nor was it the intent of Congress that it should be so considered, for, if it was first made *de jure* a part of Jacob Clement's estate, then the power of Congress to shut out the vested

property rights of assignees, creditors and others, whose claims upon the estate were fixed by law, would be at least extremely doubtful. There was not only no such intent, but such construction was carefully guarded against."

In re Clement's Estate, 160 Pa. St., 391 : 28 Atlantic Rep., 932.

The House that Jack Built tumbled to the ground because it rested on something that rested on nothing. The case of *Balch* v. *Blagge*, in the Supreme Judicial Court of Massachusetts, rested on *In re* Clement's Estate, as first decided. The decision of the Supreme Court of Errors of Connecticut in Leffingwell's Appeal (the case at bar) rested on *Balch* v. *Blagge* and *In re* Clement's Estate. The decision of the Supreme Judicial Court of Massachusetts in *Codman* v. *Brooks*, rested on *Balch* v. *Blagge*, *In re* Clement's Estate, and Leffingwell's Appeal. *In re* Clement's Estate was the *fons et origo mali*, and its doctrine has now been reconsidered and reversed by the Court which pronounced it.

III.

"Next of kin" means the next of kin surviving at the date of the Act.

The appropriation to meet the loss on the ship *Confederacy* being a mere gratuity, and the payment to Leffingwell and Pierrepont, or their representatives, hav-

ing been provided for only on March 3, 1891, and with reference to their next of kin, it is natural to conclude that by their next of kin, whom Congress meant to protect, are meant those then living, and who might be in need of this bounty for their comfortable support. The policy of the Act was similar to that of our copyright laws. If the author is dead, a renewal is granted in favor of his family, but not of his creditors, assignees, or legatees.

Suppose that William Leffingwell's daughter, Caroline, through whom the appellants trace their descent from him, had died insolvent. Could it be claimed that her creditors could now come in, and seize this fund? Yet this would be the necessary conclusion, unless the term "next of kin" in the Act of Congress of March 3, 1891, is to be taken as referring to those who are now, that is, on that date, the surviving next of kin of William Leffingwell.

Only those then in being could be "represented" by the administrators who prosecuted the claims. They acted in behalf of those who procured their appointment, and to them they were accountable for whatever they collected.

The case is analogous to that of a pecuniary legacy to a class, payable at a time subsequent to the testator's death. Those only take who answer the description and are capable of taking at the time of distribution.

Teed v. *Morton*, 60 N. Y., 506.

There was no reason for making payments to those

who might represent the next of kin who were in being when the original claimant died, except upon the theory that these payments were the discharge of a debt due to him and so to his estate. But that argument proves too much. If it were a debt, Congress would be chargeable with gross injustice in discriminating in favor of relatives, and of natural persons, as against creditors, legatees, and artificial persons.

IV.

The "next of kin" take per stirpes.

In determining the distributive share of the surviving next of kin, the right of representation must be recognized. "Next of kin," as the term is used by American lawyers and legislators generally, means those entitled to take under the statute of distributions. Particularly should it have this meaning when the fund comes into existence and their title first accrues many years after the decease of the ancestor, as in this case, March 3, 1891.

In re Clement's Estate, 160 Pa. St., 391; 28 Atlantic Rep., 932.

Gardner, Adm'r, v. *Clark, Adm'r*, 20 Dist. of Col., 261.

No other rule of division would work equity between the descendants of a common ancestor; and equity was what Congress was aiming to administer. In all cases of

doubt as to the construction of an instrument disposing of property among those who represent the dead, Courts lean in favor of that construction which conforms most nearly to the statute of distributions.

Geery v. *Skelding*, 62 Conn., 499, 501.
Conklin v. *Davis*, 63 Conn., 377.
Slosson v. *Lynch*, 28 How. Pr., 417; 43 Barb., 147.
See 2 Story on Equity Jurisprudence, § 1065, b.

If a son of William Leffingwell had been living in 1891, and also grandchildren by a deceased son, it could hardly be claimed that the latter would not have a right to be regarded as among the next of kin to their grandfather, although removed farther by one degree than their uncle; nor, on the other hand, that he would not take a share as great as that of theirs together. The same rule must govern when, as here, only grandchildren and great grandchildren survive. The plaintiffs in error stand in the shoes of their grandmother, and take together a third of the fund.

This is in accordance with the rule of testamentary law in "that when the language of a limitation is capable of two constructions, one of which would operate to disinherit a lineal descendant of the testator, while the other will not produce that effect, the latter should be preferred."

Low v. *Harmony*, 72 N. Y., 408, 414.

V.

The extrinsic evidence offered as to the meaning of the Act of Congress.

Certain extrinsic evidence was offered by the Women's Board of Missions on the hearing in the Superior Court, (Record, p. 10, fol. 12), to aid in interpreting the meaning of the Act of Congress, by showing its evolution, and is referred to in a stipulation of counsel in this cause, (Appendix to Record, p. 2). It was sent up to the Supreme Court of Errors to be considered there, providing it was legally admissible, "all the appellants in the first three entitled causes objecting thereto, which objection is reserved with the other questions." That the Supreme Court of Errors did not give it any consideration is apparent from its opinion (Record, p. 50) in which it is not even mentioned. It must be treated therefore as if excluded by the trial Court, and forming no part of the case as there considered.

But if the question of its competency be treated as an open one, we insist that there is no room for extrinsic evidence, since the meaning of the Act of 1891, when read in connection with the Act of 1885, is apparent upon its face. No resort, therefore, can be had to the draft Acts, or draft Amendments, or journal entries, out of which it grew.

"In construing an Act of Congress, we are not at liberty to recur to the views of individual members in debate, nor to consider the motives which influenced them

to vote for or against its passage. The Act itself speaks the will of Congress, and this is to be ascertained from the language used. But Courts, in construing a statute, may with propriety recur to the history of the times when it was passed; and this is frequently necessary, in order to ascertain the reason as well as the meaning of particular provisions in it."

United States v. *Union Pacific R. R. Co.*, 91 U. S., 72, 79.

District of Columbia v. *Washington Market Co.*, 108 *U. S.*, 243.

VI.

The administrator holds the fund on a special trust.

The Surrogate's decree, under which Mr. White, the special administrator *de bonis non*, with the will annexed, of the estate of William Leffingwell, received the fund, and his own receipt for it to the administrators of Hezekiah B. Pierrepont, declare it to be paid to him "as administrator *de bonis non* with the will annexed of said William Leffingwell, deceased, and as representing the *next of kin* of said William Leffingwell." (Record, pp. 43, 45). He, therefore, holds it in trust for the parties for whom he acted, under the laws of the United States, and could not be required by the Probate Court to pay it over to any one except the next of kin.

The payment was made to him as the statutory representative of the next of kin, and the fund was collected by

the Pierrepont administrators only on the certificate of the Court, (Record, p. 39), that they had given adequate security for the distribution of the estate, that is, for the legal disbursement of the fund, in the channels marked out by the Act of Congress. Their supplemental brief, filed in the Court of Claims, set out as a distinct ground of recovery, that they represented the next of kin of each partner, (Record, p. 33). The proviso in the Act of March 3, 1891, regards every administrator as representing, not the deceased, but the next of kin of the deceased. It makes him a legal representative of the claim in behalf of the next of kin.

To take money thus appropriated, is to take it subject to the terms of the appropriation. It estops the recipient from setting up any title inconsistent with that for which the Act of Congress provided. The administrator took the money as representing not the testator, but the next of kin of the testator, and he must apply it accordingly.

Pacific Railroad v. *United States*, 158 U. S., 118.

The Court of Probate granted administration to Mr. White "for the sole purpose and end" of collecting this fund, and accounting for it. (Record, p. 34). The statute already quoted authorized his appointment, notwithstanding there might be an executor of William Leffingwell still living and acting as such. Mr. White's functions were simply those of a collecting and disbursing agent for the next of kin.

If this position is sound, the judgments of the Superior and Probate Courts were erroneous in distributing the fund as part of the residuary estate of William Leffingwell.

It is of no consequence whether the Probate Court would have had jurisdiction (as in the case of a judgment recovered by an administrator for the benefit of the widow and heirs, under the Connecticut statute for a death due to the negligence of a railroad company) to order the administrator to make payment to the next of kin. Probably it would.

In re Clement's Estate, 160 Pa. St., 391; 28 Atlantic Rep., 932.

Be this as it may, it did have jurisdiction to pass the decree of distribution in favor of others, and unless that is set aside, no other Court can ever hold the administrator accountable to the next of kin, for they were parties to the Probate decree, and are concluded by it, so long as it stands unreversed.

VII.

The form of judgment asked by the plaintiffs in error.

The judgment of the Superior Court should be reversed and set aside, and the cause remanded with directions to disaffirm and set aside the decree of the Court of Probate,

and to direct the latter Court to ascertain who were the next of kin of William Leffingwell, deceased, on March 3, 1891, and then direct distribution to be made to them *per stirpes*, in the lines and proportions fixed by the statute of distributions of the State of Connecticut.

WILLIAM WARNER HOPPIN,

Counsel for Plaintiffs in Error.

Hoggson & Robinson, Law Printers, New Haven.

Supreme Court of the United States

OCTOBER TERM, 1895.

No. 207

AUGUSTUS R. S. FOOTE, *et al.*,
Plaintiffs in Error.

vs.

THE WOMAN'S BOARD OF MISSIONS, *et al.*

IN ERROR TO THE SUPERIOR COURT FOR THE COUNTY OF NEW HAVEN, STATE OF CONNECTICUT.

BRIEF

For the Woman's Board of Missions.

Defendant in Error.

STATEMENT OF THE CASE.

This is a writ to the Superior Court for the County of New Haven, in the State of Connecticut, upon a judgment of that Court, passed at its September Term, 1892,* affirming and making final, in conformity with the advice

* See addition to Record, page 1.

of the Supreme Court of Errors of that State, a decree of the Probate Court for the District of New Haven, in said County, passed March 9th, 1892, ordering the distribution of the sum of $74,864.46, being the "*residuary personal estate*" of William Leffingwell, late of New Haven, in said District, deceased.*

This order requires "that the estate be distributed by said administrator among the said residuary legatees, according to law and said will," and proceeds to direct a distribution of "one-fifth thereof to the executors or administrators of Caroline Street, a daughter of said deceased," and also under his will entitled to one-fifth of his residuary estate.†

The said Caroline Street died in the year 1878,‡ and under her will, as her residuary legatee, this defendant in error, The Women's Board of Missions, would be entitled to the fund in controversy.§

Upon the passage of said order of distribution, the present plaintiffs in error appealed to said Superior Court,‖ which Court made a finding of facts,¶ and reserved the cause and all questions arising therein, for the advice of the Supreme Court of Errors.††

The case was argued in said Supreme Court at its June Term, 1892, which Court advised the Superior Court to pass a judgment affirming the order of distribution.‡‡

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* Order of distribution, see Record, pages 4 and 5.
† Order of distribution, see Record, page 5.
‡ Record, page 11. § Record, page 47, Exhibit 10.
‖ Record, page 5, *et seq.* ¶ Record, page 9, *et seq.*
†† Record, page 9, folio 10. ‡‡ Record, page 58.

The record contains the full text of the opinion of the Supreme Court.*

THE CONTENTION.

The plaintiffs in error claim that the order distributing one-fifth of this "*residuary personal estate*" to the executors or administrators of Caroline Street is erroneous, in that as living next of kin of the said William Leffingwell, as of the date of March 3d, 1891, they have a superior legal right to the same.

Their contention relates to the source from which this "*residuary personal estate*" in the hands of the administrator was derived, and to certain Acts of Congress, which they say are controlling upon this Probate Court, in directing and ordering its distribution.

This fund is a portion of one of the French Spoliation Awards, collected from the United States by the administrator of the surviving partner of the firm of Leffingwell & Pierrepont, on account of unlawful depredation to their property by the French at the close of the last century.

William Leffingwell, the decedent, and one Hezekiah B. Pierrepont composed the firm of Leffingwell & Pierrepont, and as such co-partners were the owners of the ship "Confederacy" and her cargo. While on a commercial voyage from Canton to Hamburg with a cargo of tea, sugar and other merchandise, the ship was illegally seized by a French privateer off the coast of France on or about

* Record, page 50, folio 62, *et seq.*

June 4th, 1797, taken to Nantes, and there condemned and sold with all her cargo, and so both ship and cargo became a total loss to the owners in the sum of $160,478.29.*

Leffingwell & Pierrepont therefore, as many other American citizens who suffered from similar spoliations by the French, had valid claims for indemnity upon the French Government.† By the treaty of 1800 between the United States and the French Republic, this claim, with many others, was relinquished to France by the Government of the United States in part consideration of the relinquishment of certain national claims of France against the United States, and the executor of Pierrepont, the surviving partner, was on November 19th, 1888, upon due proceedings had in the Court of Claims, found to be entitled to the sum of $160,478.29 from the United States.‡

The proceedings upon which this claim against the United States was adjudicated were brought by petition to the Court of Claims of Henry E. Pierrepont, executor of Hezekiah B. Pierrepont, surviving partner of the firm of Leffingwell & Pierrepont, filed March 19th, 1886,§ pursuant to the Act of Congress approved January 20th, 1885.‖

In compliance with the requirements of that Act, the finding and award of the Court was duly reported to

* Exhibit 2, Record, pages 25 and 26. † Record, page 26, folio 32.
‡ Record, pages 26–27. § Record, page 19. ‖ 23 Stat. L., 283.

Congress, and in the general deficiency bill, approved March 3d, 1891,* provision was made for its payment.

Henry E. Pierrepont the executor having died in the meantime, Frances M. Wiley and Wm. Pierrepont White were on May 12, 1891, in the Surrogate's Court at Brooklyn, New York, duly appointed and qualified as administrators with the will annexed *de bonis non*, upon the estate of the said Hezekiah B. Pierrepont,† and on May 21st, 1891, were upon proper petition to the Court of Claims, substituted as plaintiffs. In compliance with the act of 1891, the claim was duly certified by the Court of Claims to the Secretary of the Treasury,‡ and paid from the Treasury to these administrators.

They subsequently rendered their account in the Surrogate's Court, and were then ordered to pay one-half of the net balance being the sum of $76,064.45 unto Oliver S. White of New Haven as administrator *de bonis non* with the will annexed of the estate of William Leffingwell deceased.§

Having received this money Mr. White rendered his account as administrator, and the order of distribution was passed, which the plaintiffs in error contend was erroneous.

Their contention is that the proviso to the Appropriation Act of Congress for the payment of this claim, shows that the appropriation was made, not for the pur-

* 26 Stat. L., 897. † Record, pages 39–40.
‡ Exhibit 6, Record, page 38. § Exhibit 7, Record, page 43.

pose of discharging an obligation of the Government, but was a donation to such class of beneficiaries as it chose to name, to wit: the next of kin of William Leffingwell, the original sufferer, living at the date of the act of appropriation, and that the Probate Court, in ordering distribution, was bound to follow the proviso as they construe its meaning, rather than the general law of the State of Connecticut governing the devolution of property.

THE ANSWER.

I. The order of distribution strictly conforms to the law of Connecticut governing the devolution of property, and is the only order of distribution which the Probate Court had power to make, under the laws of that State.

II. The appropriation was made by Congress to discharge a valid claim against the United States. The Government had been judicially advised of its obligation, and the appropriation was to pay the debt to the rightful owner. The theory of donation, gratuity or bounty has no foundation in law or fact.

III. The Proviso:—

1. When rightly construed it does not sustain the plaintiff's theory of bounty.

2. It will not be so construed as to render ineffectual the attempt of the Government to pay its debt.

3. A construction which in effect repeals the body of the Act, and is contrary to all legislation and judicial determination upon the subject, will not be favored.

4. However construed, its only function was to impose a condition of payment. The payment made, its power is exhausted. Congress has no constitutional power to make rules of distribution in contravention to the laws of the State where this estate is in process of settlement.

IV. The weight of authority is strongly against the plaintiffs' contention.

At the very threshold of this debate, we insist, however, that the plaintiffs in error have no standing in this Court.

They claim such standing, as belonging to the class of living next of kin of the original sufferer, William Leffingwell, as of the date of the Appropriation Act of March 3d, 1891.

They were not such next of kin as of that date. They were merely the great-grandchildren of William Leffingwell, and as the Record (p. 11) shows, there were very many grand-children of William Leffingwell living March 3d, 1891. The plaintiffs in error could not be *next* of kin to William Leffingwell, with so many others *nearer* in kin than they were.

It is true that they were the great-grandchildren of William Leffingwell along the line of his daughter, Caroline Street, and that their mother was dead March 3, 1891, and that there were no nearer kin to William Leffingwell along the line of Caroline Street, than they were. Also it is true that the English statute of distribution of Charles II and probably the American statutes of distribution, *expressly* provide that the child, in most cases, shall take the share which the deceased parent would have taken if living at the time when the title by inheritance commences.

There is no such provision in the proviso, and if the next of kin living March 3, 1891, are the only persons who can take the French Spoilation awards, no Court can judicially determine, that persons who did not belong to the class of the next of kin of that date can take a share in these awards, just as if they were members of that class.

The theory of a direct gift or a bounty to the next of kin living March 3, 1891, does not permit the embracing in that class, of the persons who do not belong to it, and claiming only by right of representation. Claiming by representation means claiming under the *right* of an ancestor, and has no significance or sense when all possibility of right in the ancestor is repudiated.

Besides, the plaintiffs' theory is necessarily destructive of any claim to this fund, growing out of the *rights* of the ancestor, for the instant that the plaintiffs in error claim

under the rights of their ancestor, they must necessarily take William Leffingwell, the original sufferer, as the ancestor under whom they claim their rights, and when they do that, they find themselves, by the will of their grandmother, placed outside the ownership of this fund.

The finding on page 11 of the Record, concerning the kinship of the descendants of William Leffingwell, apparently is, that all the descendants named, are his next of kin, but an inspection of the finding shows that it is but a statement of a legal conclusion; for the finding states in detail, the degrees of relationship of these descendants, to William Leffingwell, and also among others, names a widow of one of such descendants, as among his next of kin.

If the plaintiffs in error cannot stand in the class of next of kin to William Leffingwell living March 3d, 1891, they have no standing in this Court. The decision of the Court below may or may not have been erroneous; it does not concern these plaintiffs in error whether it was or not.

The authorities cited in the note below are conclusive upon this point.*

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* Where a devise or bequest is made to the next of kin without reference to the statute, only those persons take who strictly answer this description; thus, where a gift is to A and at his decease, to his next of kin, and A dies leaving a brother, and children of a deceased brother, the brother takes to the exclusion of the children of the deceased brother.

16 Amer. & Eng. Ency. Law, 704.

It was decided in Elmsley *v.* Young, 2 M. & K., 780, that the phrase "next of kin" must be held to mean, when used simpliciter, nearest kin,

I.

The Probate Court could follow no other rule of distribution.

There is no contention that the order of distribution is not in strict conformity with the Laws of Connecticut governing generally the settlement of estates in its Probate Courts.

It will be observed at the outset that this fund, which the order of distribution describes as "*residuary personal estate.*" was not received by the administrator directly from the Government. The administrator received it from the representative of the estate of his decedent's partner. It was paid to him because he was in fact the legal representative of William Leffingwell's estate, duly appointed and qualified in the Probate Court having jur-

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and so the brother of the propositus will take the whole bequest, to the exclusion of the children of a deceased brother or sister.

The subject was discussed in the House of Lords, in Withey *v.* Mangles, 10 Cl. & Fin., 215, and it was decided that Elmsley *v.* Young must be regarded as settled law in regard to this point. Lord Cottenham said that term "next of kin" had acquired no such popular import as to include those who would take under the statute of distributions in cases of intestacy.

See also Weber's Settlement, 17 Sim., 221; 2 Redfield on Wills, 399; 2 Jarman on Wills, 108.

In a note on this page (108) it is said: The English Courts have in later times departed from the old rule of interpretation, which considered the next of kin to mean those who would take under the statute, and they now hold that in the absence of a manifestation of any different purpose in a will, the term means nearest of kin, though such person would be postponed to another under the statute.

This question has been settled in conformity with the English rule, in the Supreme Court of Massachusetts. Swasey *v.* Jaques, 144 Mass., 135; Fargo *v.* Miller, 150 Mass., 225.

isdiction of the settlement of that estate. It was paid to him in discharge of a legal claim which the estate of William Leffingwell had against the estate of his surviving partner. It was paid to him upon an accounting had between the estates of these partners and in the liquidation of these partnership affairs.

The plaintiffs in error contend that the distribution should follow a different rule than that prescribed by the Laws of Connecticut. Against this contention we have always urged, that *the Probate Court had no power to adopt a different rule than that prescribed by the laws of the State which gave it jurisdiction and prescribed its powers.*

Probate Courts in Connecticut have no general equitable jurisdiction. Their jurisdiction is limited and prescribed by statute. They have only to do with estates of deceased persons and insolvent debtors, the appointment of guardians and the estates of minors, the appointment of conservators and the estates of incompetent persons, and the commitment of persons insane. They have absolutely no power to adjudicate upon other matters.

Hence the Probate Court could have only done one of two things. It could have refused to have passed any order, on the theory that the fund in the hands of Mr. White was no part of the *Estate* of Wm. Leffingwell, and therefore not subject to its jurisdiction, or it could have passed the order which it did, regarding the fund as a part of such Estate.

The same condition of things obtained upon the appeal

of the present plaintiffs in error to the Superior Court. While the Superior Court is a Court of general jurisdiction both in actions at law and in equity, yet on appeals from probate courts, it hears the case as a probate court, and can administer no broader relief than the probate court itself had legally the power to grant.*

Whatever may be said as to the provisions which Congress sought to make as a condition precedent to the payment of the original award, the administrator in this case holds his fund free from the earmarks of any peculiar trust or condition imposed upon it by Congress, or any other department of the Government, and bound to dispose of it only as the Court from which he derived his authority to receive it, may prescribe, in conformity with the laws of the State of Connecticut governing the distribution of Estates.

II.

The theory of donation, bounty or gratuity has no foundation in fact.

The contention of the plaintiffs is that the "French Spoilation Claims" which for nearly one hundred years have been urged upon the attention of Congress, have no foundation or basis in a right of property, and hence the payment of them was a mere act of grace.

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* Davis' Appeal, 39 Conn., 395; Hewitt's Appeal, 53 Conn., 24; see also opinion of Andrews, Ch. J., in this case, Record, page 57, folio 86, to the effect that if this fund is not *estate* of Wm. Leffingwell, then Mr. White does not hold it in virtue of his office as administrator, and the Probate Court had no jurisdiction to distribute the fund.

HISTORY.

By the treaty of 1778 between the United States and France, France became obligated to aid the United States in the prosecution of the war for independence, and the United States in addition to granting to France certain exclusive commercial privileges, guaranteed to France "forever, against all other powers, all of its then possessions in America, as well as those it might in future acquire."

France faithfully fulfilled her part of the contract.

The struggle for independence had scarcely been brought to a successful issue, when France was plunged into war with nearly all the powers of Europe.

The attempt was made to starve France into submission by placing an embargo upon all neutral commerce.

France retaliated with like measures, and the United States, almost the only neutral power in Christendom, found its commerce driven from the seas.

From about 1793 to the close of the century, our merchantmen were seized and condemned by the French in utter defiance of all rules of international law.

Our Government remonstrated, and was met with the excuse that by reason of the common language, etc., our sailors, in the confusion of the times, were mistaken for Englishmen.

The United States, crippled by the long struggle for independence, was powerless to fulfill her obligations to France under the treaty of 1778, and with the English

faction and the French faction at home, the condition of our Government was perilous in the extreme.

With the very beginning of the French spoliations, that Government promised to make indemnity to our suffering citizens, and during all of the negotiations which finally resulted in the convention of 1800, France never denied her liability to make reparation, but urged as an offset her claims upon our Government for indemnity for not fulfilling our obligations under the treaty of 1778.

At length, after almost interminable difficulties, the treaty of 1800 between the United States and France was signed, and was finally approved by the Senate of the United States and proclaimed by the President December 19th, 1801.*

By this treaty, each Government mutually renounced its claims upon the other.

France released the United States from its national obligations under the treaty of 1778, and as a consideration for this release, the United States released France from all obligation to indemnify its own citizens for the spoliations upon their commerce.

As the Court of Claims has judicially determined, our Government appropriated and used the just and lawful claims of its own citizens to appease France and secure a release from its rightful obligations to that power.†

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* Gray, *Admr.*, *v.* United States, 21 Ct. of Cls. R., 386.

† Gray, *Admr.*, *v.* United States, 21 Ct. of Cls. R.; on page 392, Davis, J., summarizes the transaction between our Government and France, as follows: "In the negotiation of 1800, we used '*individual*' claims against '*national*' claims, and the set-off was of French national claims against American in-

The claims of our citizens against France to indemnity for the spoliations were good by the law of nations, and were not merely ethical in their nature. They existed independent of any treaty stipulations.

President Washington, in his message, December 5th, 1793, referred to these spoliations upon our vessels and commerce as requiring attention, and suggested that on receipt of proofs, "due measures would be taken to obtain redress for the past and more effectual provisions for the future."

And Mr. Jefferson, when Secretary of State, in his circular of August 27th, 1793, "advertised to the world assurances of governmental protection, and assured the merchants of the United States that proper proceedings would be adopted for their relief."*

From the beginning of the present century down to the year 1885, constant and unremitting effort has been made by the original owners of these claims, and their

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dividual claims. That any government has the right to do this, as it has the right to refuse war in protection of a wronged citizen, or to take other action, which, at the expense of the individual, is most beneficial to the whole people, is too clear for discussion, nevertheless, the citizen whose property is thus sacrificed for the safety and welfare of his country, has his claim against that country; he has a right to compensation which exists even if no remedy in the courts or elsewhere is given him. A right often exists where there is no remedy, and a most frequent illustration of this is found in the relation of the subject to his sovereign, the citizen to his Government.

"It seems to us that this 'bargain'" (again using Madison's words), by which the present peace and quiet of the United States, as well as their future prosperity and greatness were largely secured and which was brought about by the sacrifice of the interest of individual citizens, falls within the intent and meaning of the constitution, which prohibits the taking of private property for public use without just compensation."

* Gray, *Admr.*, *v.* U. S., 21 Ct. of Cls. R., 355.

representatives, to induce Congress to make just and lawful compensation for their property which had been thus appropriated by the United States for its benefit by the convention of 1800.

More than twenty favorable reports have been made to both branches of Congress, eight bills have passed the Senate in favor of these claimants, and three have passed the House.

ACT OF 1885.

This act, approved by President Arthur January 20th, 1885, was the beginning of the legislation under which these present awards were made.*

This is not an act of Grace, but an Act of Justice.

It recognizes that sundry citizens of the United States, "or their *legal representatives*, had *valid* claims to indemnity upon the French Government arising out of *illegal* captures, detentions, seizures, condemnations and confiscations," etc.

It provides that such citizens or their *legal representatives* "may apply by petition to the Court of Claims."

It provides "that the Court shall examine and determine the validity and amount" of their claims, "together with their present ownership, and if by assignee, the date of the assignment with the consideration paid therefor."

The very language itself indicates that Congress supposed itself to be legislating about *claims of property*,

* Supp. to Rev. Stat., Vol. 1, p. 471; 23 Stat. L., 283.

claims of right, "*valid claims*," claims *capable of assignment*, claims *subject to ownership*, and claims of such nature and character as would pass upon the death of the *owner* to his *legal representatives*.

The Act assumes that some of our citizens had claims, which in their inception were "valid claims" against France, and goes on to authorize the Court to examine and

> "decide upon the validity of said claims, according to the rules of law, municipal and international, and the treaties of the United States applicable to the same," and to "report all such conclusions of fact and law as in their judgment may affect the *liability* of the United States therefor."

In all of this act there is no suggestion of mere "moral" or "ethical" obligation, nor of "bounty" or "gratuity."

But the question submitted to the Court of Claims was this: Is the United States *liable* for these claims under the rules of law, municipal and international, and the treaties of the United States applicable to the same, and if so, who are now the *legal owners* of these claims?

Two years were limited within which petitions might be brought under this act, and a large number of claims were filed.

It became the duty of the Attorney General to urge every lawful and proper defence against the *liability* of the United States.

The great question of *liability* was tried and determined

in the leading case of Gray, Adm'r, *vs.* The United States.*

The opinion was delivered by Davis, J., May 17, 1886, and is a most learned and exhaustive examination of the whole question in every aspect.

The counsel for the United States had urged almost every conceivable reason against not only the *liability* of our own Government, but the original validity of the claims against France.

It was contended that a state of war in fact existed between the United States and France during the period covered by these spoliations, and hence no valid claims could be made by our citizens against a nation with which their own nation was at war, and that the spoliations were therefore justifiable under the rules of war.

If this were so, it might give rise to some *ethical* claim upon the generosity of our Government which might prompt Congress to make a *donation* to those of our citizens who, in the emergencies of war, had chanced to sustain losses far in excess of the vast majority of our people. If these special sufferers were dead, the same con-

* Gray, *Admr.*, *v.* U. S., 21 Ct. of Cls. R., 340, opinion of Davis, J., pages 343–407. Subsequently in the autumn of 1886, counsel for the Government asked for a re-argument of the questions decided. This was granted, and the question was again carefully argued in behalf of the Government, and in December of the same year, the Court delivered another elaborate opinion, re-affirming its decision of the previous May. See Cushing *v.* U. S., 22 Ct. of Cls. R., 1.

The report of Mr. Mansur from the Committee on Claims to the House of Representatives of the 50th Congress, Feb. 28, 1889, is a most valuable and thorough consideration of the subject. It will be found in Book Exhibit 5, pages 4–40.

siderations might move Congress to make such a donation to such persons as would as nearly as possible be in lieu of donation to the original sufferers.

By the decision in Gray, Adm'r, *vs.* United States, every contention of the counsel for the Government was overruled, and it was determined that these claims were *valid obligations against the United States.*

Surely *stare decisis* ought to apply to this branch of the plaintiffs' contention, even if it cannot be regarded as strictly and technically *res adjudicata.*

It is true that the Act of 1885 provided in Sec. 6 that the finding and report of the Court should be taken as merely advisory as to the law and facts found, and should not conclude either the claimant or Congress, and that the Act should not be construed as committing the United States to the payment of any such claims.

However after the most searching and thorough investigation in the Court of Claims, Congress was *advised* of the *obligation* of the United States, and impelled by such advice proceeded to make provision for its discharge.

It made its appropriation "*to pay the findings of the Coust of Claims on the following claims for indemnity.*"*

In determining and making provision to *pay* these claims, Congress elected to regard the findings of the Court of Claims establishing them, as conclusive upon it. Conclusive "*as to the law and facts,*" which established these claims as valid claims for indemnity against the

* Appropriation Act of 1891, 26 Stat. L., 897.

United States, growing out of the fact of an appropriation of property by the Government without compensation to the owner.

These claims for indemnity, we contend, were the *property* of the original sufferers, and passed by death to their legal representatives. They differed from other obligations only in that satisfaction could not be *compelled.* They were not enforceable without the consent of the Government.

The power to enforce satisfaction is by no means the test of the existence of a valid claim.

Were this so, then no valid claim could ever exist against a sovereign State however just and meritorious.

If an individual will not satisfy his obligations when they have been lawfully established, his creditor can invoke the aid of the State to compel him to make satisfaction.

Not so, however, with the State. "The King can do no wrong"—the State can do no wrong. The Sovereignty, whether King or State, has only to be *advised* of its *obligations*, and the rule of justice to which it can voluntarily do no violence, will at once prompt a full and ample satisfaction.

The obligations of the Government, from the moment they arise, are the lawful property of those to whom they are due.

They do not become property by the act of the Government in recognizing their validity and providing for

their discharge. They spring out of the wrongs or injuries sustained, which at once entitles the sufferer, by the laws of Justice, to full and complete satisfaction.

In this respect they differ from pensions of all sorts, which are granted as matters of generosity, and are conferred by the Government not in satisfaction of any law of Justice, but as acts of Grace. Every citizen *owes* his *life* if necessary in defense of his country. This his Government has a *right* to ask of him in the great emergency of war.

The obligation to make this supreme sacrifice, is due from every citizen as the price of the benefit and protection of civil government.

Hence when a Government undertakes to make provision for the dependent families of those who fall in its defense, it proceeds upon no theory of justice, but from motives of pure generosity.

If any obligation of restitution rested upon the Government in such cases, it would be an obligation of so supreme value that it would be impossible to discharge it.

Hence, therefore, in all matters of *gratuity* merely, the Government has a right to select its own *beneficiaries* and attach to its gift whatever terms and conditions it may choose. But when it purposes to *pay* a valid *obligation* it can only *pay* the rightful owner.

We rest on the original ownership of the claim by Leffingwell & Pierrepont which has been *paid as such* by

United States, growing out of the fact of an appropriation of property by the Government without compensation to the owner.

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We rest on the original ownership of the claim by Leffingwell & Pierrepont which has been *paid as such* by

the United States, to the lawful successors in ownership.

Our adversaries make no such claim. They do not claim by virtue of legal *ownership* and a payment to satisfy such ownership. They claim that, by reason of the facts in the case, the United States determined to disregard the rules of legal ownership, in the distribution of this fund, and to look out only for those, who "owned" in the *blood* of the original sufferers, rather than those who owned in the *property of the original sufferers.*

We therefore think we have the right to designate our client as "owner," and to designate our adversaries as "non-owners."

The "owners" in the blood, recognize that the devolution of property by ownership, is so universally the custom, that they are called upon to put forward some cause, as explanatory of an intent of Congress, to depart, so widely, from the custom of paying a claim according to the rules of legal ownership, as to prefer, as against such owner, persons who are not owners.

But we assert, without the slightest hesitation, that from the outset of this great debate until its close, these claims were put forward and maintained solely on the ground of the *obligation* of the United States.

Besides, how can it be explained that, if the "bounty" of Congress was called into exercise, Congress should be inquiring for the "owners" in the *blood*, and *not* the owners of the property of William Leffingwell.

If the "owners" in the blood of William Leffingwell

have, for various reasons, fallen outside the line of legal ownership, how can it be supposed that Congress would, practically, *re-instate such "owners" in the blood, into ownership in the property of William Leffingwell, contrary to his will.*

Would it not rather be supposed, that if these claims were paid out of the *bounty* of Congress, that bounty would have been shown to *those who represented the legal ownership*, of the original owners of the ships and cargoes.

These "owners" in the blood have done nothing, as such, to merit the consideration of the United States, more than other citizens.

We have nothing to do in this argument, with the fact, that in most cases, the "owners" in the blood, are also the owners in the property. In that class of cases, no *contest* will ever arise.

A contest is only possible where these two ownerships conflict, and *one or the other must go down.* In case of such conflict, it cannot be supposed that there was any intent of Congress, to prefer the *mere blood* of the original owner to the persons, who by law and right, were entitled to succeed to the ownership as property.

The present "owners" in the blood have rendered no metitorious service to their country; *indeed, the very foundation of their claim is that, personally, they have no merits whatever; that their merit springs entirely from their blood relation to the original owner; and that such*

blood relation, defeats, in case of conflict, the property relation to the original owner, of their antagonists.

III.

The Appropriation Act of 1891 and its Proviso.

The Act of 1885 required the Court of Claims to report to Congress, in December each year, its conclusions on all cases considered and not previously reported.

We therefore approach the construction of this *Appropriation Act*, with its subordinate proviso, under the influence of the great controlling fact that these claims were pressed as claims of property, and allowed by the Court of Claims as claims of property.*

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* The Court of Claims in response to an inquiry in the Act of 1885, concerning the ownership of the claims, in the case of Gray, *Admr.*, *v.* United States, 21 Court of Claims, 406, said: "We consider it no part of our duty under the statute, to place ourselves in the position of a Probate Court, and report to Congress the manner in which the ultimate recovery should, under the laws of the thirty-eight States and Territories of this Union, be distributed among the numerous next of kin or devisees of the original claimants and their descendants. The Administrators are officers of these Probate Courts, subject to their jurisdiction and control, and presumably have filed adequate bonds, for the honest and proper performance of the trust reposed in them."

Thus the Court of Claims had said that it was practically impossible for them to go into the question, who would be the living next of kin or devisees of the original claimants.

That it would be practically impossible for the Court of Claims to settle this question, is at once obvious. It would call from all over the various States and Territories of the United States, and perhaps from abroad, persons now living who would claim to be the now living next of kin or devisees. For the settlement of the question who are the present next of kin and legatees involves the settlement of the other question, who are not such present next of kin or legatees, and the determination of such questions, among the persons now scattered all over the world, by a single Court in Washington, would be practically impossible.

When we come to consider the meaning of the certificate called for in the proviso, the above quotation from the opinion of the Court of Claims becomes of great significance.

A.

The Act, in a single sentence, opens with a declaration of a resolve to *pay* the following claims, and its subordinate proviso reads:

> "PROVIDED, that in all cases where the original sufferers were adjudicated bankrupts, the awards shall be made on behalf of the next of kin, instead of to assignees in bankruptcy, and the awards in the cases of individual claimants shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represent the next of kin, and the Courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursements of the awards."

One of the classes of the "following claims" is the class of awards to executors of the wills of the original owners of the property despoiled by the French, or administrators with the wills annexed of such original owners, or it may be to administrators, with the will annexed of an assignee of the original owner.

The commencement and body and last clause of this single sentence, therefore, show the clearest intent to pay these claims to such executors and administrators with the will annexed, upon the theory that they, as such executors and administrators, had the legal title to the claims, because they represented the original owners of the claim, and would make legal distribution of the funds.

The claim was to be paid to them in analogy to the way in which all claims are paid which belong to an owner who is deceased, to wit: payment to his legal representative.

It is a singular proposition, but it is the one which the "owners" in the blood, though not in the property, must maintain, that the subordinate proviso established a new law of distribution concerning these awards which were yet *to be paid to the executors or administrators, with the will annexed.*

If our adversaries cannot successfully maintain that proposition, their case is lost, no matter what this singular proviso may have been intended to express.

It is our claim that this proviso was expected to interfere with the ordinary rules of distribution of personal property in only a single instance, to wit: that class of cases where the original owners were adjudicated bankrupts; that throughout the proviso, and especially in the third clause it distinctly provides that in all other instances where the award was to be paid, it was to be distributed according to legal rules; in other words, that the proviso has for its foundation the ordinary rules of distribution of the property of a deceased man's estate, according to ownership, and makes but a single exception to such rules; that the exception proves the rule; that special refusal to recognize rights of creditors, in cases of adjudicated bankrupts, implies intention in all other cases where the award was to be paid to abide by the rules of ownership.

Looking into the history of the great debate, we see the origin of the idea of the proviso; we see that it would be impossible to try to distribute these funds to the creditors in cases of adjudicated bankruptcy, and perhaps to the creditors generally of these ancient estates; that it would be impossible to find out in the present day and generation the persons who would succeed to the claims of such creditors, and that therefore the fund would be used up by the officers who had it charged upon them to try to find out the creditors who could not be found, but who, if found, would be entitled to receive the money.

Take the bankrupt schedules, in any such case, and try to imagine how to find the present equitable owners by succession from the bankrupt's creditors.

Now the rights of creditors in bankruptcy are purely statutory, and it may well be that Congress should not recognize the law by which creditors could take the estate in a case where it would be impossible to find out who the creditors were.

In such cases, also, Congress might not give validity to wills which, in fact, had not conveyed this property, and, as will be seen later, all cases of adjudicated bankrupts were struck out of the Appropriation Act.

B.

History of the Proviso.

The language of this proviso is so peculiar that we shall trace the history of the Appropriation Act through

Congress in order to ascertain what the proviso meant when first introduced, and its relation to the Appropriation Act.

1. From time to time the Court of Claims sent to Congress its findings in various cases. Finally Senator Frye introduced a bill into the Senate to pay the amounts called for by these findings.

The bill, as thus introduced, is printed in the record, and shows the intention not only to pay *all* the awards which *had* been made by the Court of Claims, but also all of those which should *thereafter be made*.*

This bill was referred to the Committee on Claims. Their report was made to the Senate in February, 1891, and is found in the Book, Exhibit 5, which is submitted to the Court.†

This report adopts the previous report of the Committee of the House, containing a full account of these French Spoliation Claims, and then alludes briefly to the present situation of these claims.

The report speaks of the contention that had arisen, that a provision should be made for an appeal by the United States to the Supreme Court of the United States from the decisions of the Court of Claims.

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* Exhibit 4, Record, pages 34, 35 and 36. Also Book Exhibit 4. The books marked Exhibit 4 and Exhibit 5, are on file with the clerk, and may be referred to, pursuant to the stipulation of counsel found on the last page of the Record, being page 2 of the addition.

The first eight pages of the Book Exhibit 4, are the same as Exhibit 4 in the printed record.

† Stipulation page 2, addition to the record.

The report disposes of that contention by saying, in substance, that the Committee were entirely satisfied with the reasoning of the Court of Claims; that, though Congress had reserved the right not to be bound by the Court of Claims, it has not reserved the right to appeal from its decisions to the Supreme Court of the United States, and that therefore Congress ought to regard the question of the *right* of the claimants as settled, so far as the judiciary branch of the Government could settle it.

The report alludes to the fact that the Court of Claims had sustained the claims of the insurance companies, and approves the reasoning of the Court of Claims with reference to such action.

The Committee strike out of the bill all reference to future findings, and report the bill as amended.

The report further recommends, without explanation, the addition of the famous proviso.

If we look into the findings and awards which had been reported to Congress by the Court of Claims, we shall find that there are several distinct classes:

a. Awards to administrators of the original owners of the claims.

b. Awards to executors of the wills of the original owners, or to administrators with the wills annexed of original owners.

c. Awards to administrators, either with or without a will, or to executors of the wills of the surviving partner, if the original owners were partners.

d. Awards in favor of corporate insurance companies.

e. Awards in favor of private insurers (a custom quite in vogue in those days), and conspicuously represented in the findings connected with the "Brooks" cases and other similar cases.

f. Awards to administrators of assignees of such private insurers, of which assignees Peter Chardon Brooks was the most conspicuous example.

g. Awards to administrators of assignees, not in bankruptcy, of the original owners, of which the "Humbird" case is a conspicuous example; there are also, we think, some cases where the private insurer took an assignment of *all* the claims of the insured, beyond what he paid as a loss.

h. Awards to administrators of assignees of the original owners who had been adjudicated bankrupts, of whom Richard C. McMurtrie may be regarded as an example.

It is thus seen that the facts, that the bill, when introduced, proposed to pay all the findings and awards which had been, and should thereafter be made; that the bill as amended, proposed to pay *all* the awards that had been made, are of great significance in construing the proviso, which was added to the bill by the Committee on Claims.

The fact also that the bill, when this proviso was first added to it, proposed to pay the corporate insurance companies, private insurers, assignees of private insurers, and assignees of original owners, shows conclusively that

the proviso when first framed and added to the bill, paid no respect *merely to the blood of the original owner; that the proviso paid more respect to the rules of ownership from the original owner, than to his blood.*

1. Indeed, it is singular to imagine how Congress could think, that it was doing *justice* to the rights of the original owners, who had never asked for charity, by disregarding, in the same statute that respected such rights, the most important right of all, of the original owner; his right to transfer it by assignment or will.

2. The proviso when first added to the bill, had, at least so far as its first clause was concerned, sole reference to the cases of adjudicated bankrupts.

As a matter of fact, in these cases of adjudicated bankrupts, the claims were pressed by their heirs. It will be found that there were claimants,—administrators of the original bankrupt owners,—pressing the same claims as the administrators of the assignees of bankrupt owners.

Indeed it is quite probable that no award would have been made to the *administrator of an assignee of a bankrupt owner*, if the determination of the Court of Claims to award to the *true legal title* had not been carried out in such cases.

Probably, however, the heirs in such cases argued that even in a distribution by the administrator of the assignee it would be impossible to find the creditors, and with no creditor intervening the fund would go by operation of law to the heirs.

But at least it was fair to ask Congress to say, that in such cases the law which would divert the fund from its owner to pay the claims of creditors who could not be found should not be recognized, so far as this particular class of adjudicated bankrupts was concerned.

It will be seen, however, that it was not intended to rescind or reject the awards in such cases, as by so doing the claims would have been barred by the limitation in the Act, of 1885. The awards were simply to be *made over* on behalf of other parties through these administrators of assignees in bankruptcy.

The first clause of the proviso now has a clear meaning:

> "PROVIDED, that in all cases where the original sufferers were adjudicated bankrupts, the award shall be made *on behalf* of the next of kin instead of to assignees in bankruptcy."

The award is not to be rejected. It is not to be paid *to* the next of kin, but it is to be made over on *behalf of* the next of kin. The next of kin are correlated to the assignees in bankruptcy.

The assignees in bankruptcy were dead. The next of kin of the original owner were dead in these cases.

C.

The meaning of the second clause is shown in one of the latest decisions of the Court of Claims (Hooper, Adm'r, *vs.* United States),* which suggests the clearest

* Hooper, *Admr.*, *v.* United States, 28 Ct. of Claims. R., 480, the Ship Eliza, decided Nov. 13, 1893.

explanation yet attempted of the second clause of the proviso. In this case Harvard College was the residuary legatee of the original sufferer. The treasurer of the college had been appointed administrator with the will annexed and had prosecuted the claim, with the knowledge and acquiesence of the granddaughter of the original claimant, who was in fact his living next of kin.

The award and appropriation having been made, a motion was made in the Court of Claims by the claimant, administrator for a certificate. The motion was opposed on the ground that the administrator did not represent the next of kin, but the will.

The Court, however, granted the certificate, holding that the administrator, having been appointed with the knowledge and acquiescence of the next of kin, she could enforce in the Probate Court whatever right she might possess, and that the administrator would be regarded as representing her.

The Court also held that the certificate was to be regarded as a *prerequisite of payment, but does not determine* the rights of beneficiaries. The design of the statute requiring the certificate, was to prevent the payment of money to an administrator who, in fact, represented *nobody*, or only creditors or assignees in bankruptcy.

The Court of Claims had said in Gray, Adm'r, *vs.* United States, *supra*, that the present owner of the claim was the administrator of the estate of the original sufferer, and that it would be for the several Probate Courts

to determine who by law were at this time entitled to the fund according to the distribution required by the laws of the several States. In the opinion in Hooper, Adm'r, *vs.* United States, the Court says:

> "We are of the opinion that when they placed in the Appropriation Act this proviso, *Congress did not intend to change the policy then in force or to interfere with the jarisdiction of the Probate Courts under the laws of the several States.*"

What Congress did intend by this proviso, was to provide reasonable safeguards to prevent an administrator, who represented nobody, from getting the fund and putting it in his pocket, because he could find no person to whom to make payment. Therefore it says that the award is not to be paid unless there are next of kin, who will be sure to get it, if nobody else under the laws of the several States has a better title to it.

Therefore, the Court of Claims says that there are to exist as a condition of payment in any case, next of kin, who may be notified of the existence of the fund, and who may therefore appear in the various Probate Courts and protect their rights "to the extent" that no action will be taken in the distribution of the estate without their knowledge, and without an opportunity on their part to be heard.

If, under the laws of the several States, the legatee establishes a better title, he will take the fund. It will be open to the next of kin to claim that the will never was

probated, and that it is too late now to probate it, or to prove any fact which bars the legatee, under the laws of the several States, from receiving the money.

If, however, as a result of the contest in the Probate Courts, the legatee establishes his title, he, and not the next of kin, takes the fund.

This exposition of the meaning of the proviso is by far the clearest and most satisfactory that has been heretofore presented by any judicial tribunal, and, coming as it does, from a Court of high standing and possessed of peculiar and exceptional knowledge of this whole subject, it is entitled to the greatest conderation.

The words of the proviso are not very felicitous, but we cannot imagine how the body of the act could be reversed in its concluding clause. We cannot imagine that the proviso, instead of filling its proper function of a subordinate part, becomes a great revolutionary feature of the whole act.

The bill, as amended by the Committee on Claims, was sent to the Committee on Appropriations.

The Committee on Appropriations *made a careful sifting of the various findings, or tried to do so, and intended to cut out all that they did not intend to pay.*

They cut out all cases of awards to Administrators of assignees of adjudicated bankrupts. They intended to cut out all cases of corporate insurers. They did not intend to cut out any other class of cases.

The Committee on Appropriations say in substance:

> "Out of the findings and awards that have been sent in to us by the Court of Claims, we will pay the following, to wit: among others, the claim of "Henry E. Pierrepont, Executor of the will of Hezekiah Beers Pierrepont, surviving partner of the firm of Leffingwell & Pierrepont."

However, when we come to look at the bill as passed, we find a most singular state of things. Though they intended to cut out all the insurance companies, some were left in.

The Rhode Island Trust Company represents the Providence-Washington Company, an insurance corporation doing business in 1800 and now doing business. The French Spoliation claims that it owned were set apart in trust long ago for the benefit of its then stockholders and the Rhode Island Trust Company was the trustee.

The findings show two, perhaps more, cases of different ships in which the award was to be paid to the Rhode Island Trust Company on the same grounds, *one of which remained and the other was cut out by the Committee, who reported the Appropriation Act.*

The New York Insurance Company was the insurance company in our case. This award was cut out. John Stewart, Receiver of the Baltimore Insurance Company, succeeded in getting two awards through on the Brig Mary and Schooner Emily, which awards were on behalf of an insolvent insurance company. There were other similar cases in which his awards were cut out.

We thus find a great deal of mistake even in the act as passed, and it is not improbable that the proviso remained in the Appropriation Act through a similar mistake.

While we do not ask that it should be construed to be a mistake, yet we do insist, from this history of the Appropriation Act, that the Court should be very careful not to construe what probably was at least half blunder into an intent to take away the distribution of property according to the natural and customary rules of legal ownership.

The proviso, in so far as it relates to adjudicated bankrupts, is certainly a blunder. There were no such cases in the Appropriation Act, so far as the Committee had any knowledge, for they struck them all out.

Nevertheless, the Court of Claims in a subsequent case, on an application to substitute the administrator of the surviving partner of the firm who were original sufferers, for the administrator of this assignee in bankruptcy, finding no other field for the operation of this first clause of the proviso, ruled that the proviso related to the future awards the Court might make, and ordered such substitution.*

When we consider the clear evidence which exists that Congress was determined that the Appropriation Act should not apply to *future* cases, and then reflect how the Court of Claims has made this clause of the proviso applicable to *future* cases, the result is certainly interesting.

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* Henry, *Admr.*, *v.* United States, Ship Concord, 27 Ct. of Cls. R., 142.

We insert some memoranda from Book Ex. 5.* This Book does not contain all the findings. We have gathered such as we could and bound them together, and paged it in ink.†

It is permissible for the Court to examine the public history of the act in question, and the public findings in the several cases mentioned in the Appropriation Act, in order that the Court may understand the phraseology of the proviso, just as Congress understood it.

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* See Stipulation page 2 of addition to the Record.

† We have not noted all cases of Insurance Companies whose awards were rejected, nor all cases of assignees in bankruptcy, nor all cases of private insurers. The case of Brooks, as an assignee of private insurers, was too notorious to permit any idea that it was included by mistake and Humbird's case was one of the largest awards. Nor have we critically examined all the findings, only enough to illustrate our claims.

Page 82. Newport Ins. Co., allowed award; struck out of Appropriation Act.

84. Rhode Island Trust Co., Brig Ranger, allowed award; struck out of Appropriation Act.

183. Rhode Island Trust Co., Schooner May, allowed and passed.

168. Insurance Co. North America, Brig Amelia, allowed; struck out.

168. Richard C. McMurtrie, Adm'r, *de bonis non* of John Bohlen, surviving assignee in bankruptcy, allowed; struck out.

168. Insurance Co. of Pa., allowed; struck out.

172. Henry Lisle Waln, Adm'r of Jacob S. Waln, deceased, surviving assignee in bankruptcy of Thomas Murgatroyd, allowed; struck out.

172–176. Ship Raven, several cases of awards to Adm'rs of private insurers, allowed and remained; bankrupt cases struck out.

178. The New Haven Ins. Co., allowed; struck out.

180. Freeman, Receiver of Boston Marine Ins. Co., allowed; struck out.

186–214. Several cases of awards to private insurers, to Assignees

These documents are introduced for the purpose of giving fair notice of their existence. The Court may undoubtedly pursue its own inquiries with reference to any public document or Congressional report or debate, which will shed any light on the construction of this Appropriation Act.

Of such matters the Courts take judicial notice.

The motion for the appeal to the Superior Court avers that there were awards to corporations, such as the

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(Brooks) of private insurers (Brig Sally, Cruft, Master), allowed and remained.

(Certificates issued in these cases, Adams, Adm'r, *vs.* U. S. Court of Claims, 249.)

200–203. Brig Mary, John Stuart, Receiver Baltimore Ins. Co., allowed, remained and paid, $11,000.

(In the same report of Court of Claims to Congress, John Stewart, Receiver of Baltimore Ins. Co., was allowed $10,000 on Brig Two Sisters, struck out.)

222. Schooner Eutaw, John Stewart, Receiver Baltimore Ins. Co., allowed, struck out, and also allowed and struck out the award to the North American Ins. Co. "which was at the time of the insurance, and still is, engaged in the business of insurance at Philadelphia," (Page 223.)

224. Struck out, John Stewart, Receiver Baltimore Ins. Co., on Schooner Sisters (Memo. on page 226 concerning receivership.)

214. Ship Rosanna, "Humbird's" case. A personal representative, in case of a voluntary assignment of the original owner, the consideration being "Love and affection for acts of kindness shown the assignor in his old age," allowed $66,500, remained (certificate issued, as found out at the office of the Clerk of the Court of Claims)

509. Brig Virginia, George Taylor, private insurer, assigned to Bank of United States to secure his debts. Bank assigned to sundry persons, who assigned to Corcoran, acting for self, Riggs & Smith. Award to Corcoran's Ex'r, and to Adm'rs of Riggs & Smith; remained in Appropriation Act.

Rhode Island Trust Company, and that this fact has some significance.*

The Court may look into the awards to find out what significance should be given to this point.

It will then in fact be ascertained that Congress intended to strike out all such cases.

Book 5 shows awards to Insurance Corporations as follows: two cases to the Newport Ins. Co.; two cases to the Rhode Island Hospital Trust Co., trustee for Providence Washington Ins. Co.; fourteen cases to Ins. Co. of North America; sixteen cases to Insurance Company of State of Pa.; two cases to The New Haven Insurance Co.; three cases to Boston Marine Ins. Co.; six cases to John Stewart, Receiver of Baltimore Ins. Co.; three cases to the Receivers of New York Ins. Co.; three cases to John Stewart, Receiver of Maryland Ins. Co.; one case to John N. A. Griswold, Trustee of United Ins. Co. of New York,—in all, fifty-two cases—and large amounts in each case.

Only three of these remained in the Act, *one* to Rhode Island Hospital Trust Co., and *two* to John Stewart, Receiver of The Baltimore Ins. Co., and the peculiarities about these are elsewhere explained.

Personal experience in going over these lists shows how the mistake could readily occur.

When, therefore, in the Act as passed we find the phrase "individual claimants" in the second clause of

* Record, page 6, folio 6.

the proviso, we cannot construe it as correlated to corporate claimants.

By the real intent of Congress, there were no corporate claimants.

E.

Suppose, however, we take the view of the non-owning next of kin, that *individual* claimants are set off against some other class; is it not clear that they should be set off against *partnership* claimants?

The provisions for the requirement of a certificate are entirely inapt and crude and ludicrous, with regard to the partnership awards.

These were to the executor or administrator of the surviving partner.

How could the Court of Claims intelligently or fairly give any certificate that such executor or administrator represented or could represent the next of kin, living or dead, of the first deceased partner? *The executor or administrator of the surviving partner represents the partnership.*

How absurd is the certificate actually given in this case?

If the theory of the non-owning next of kin is correct, all this money should have been paid by force of the *proviso and certificate to the living next of kin of Pierrepont.*

True, they would not own by right or title from H. B. Pierrepont more than half the money in any event, but *what has ownership got to do with the theory of non-owners?*

It must be presumed that Congress only intended to call for a certificate in cases *where the requirement would be sensible and appropriate.*

Congress called for no certificate in cases of corporations (if it intended to pay any), and partnerships are *quasi* corporations.

We insist that partnerships are without the provision requiring certificates.

They are not individual claimants.

F.

We also claim that cases of wills were without the requirement of the certificate.

As said above Congress ought not to be supposed as committing an absurdity in this requisition for a certificate.

An executor or administrator with the will annexed cannot *as such* represent next of kin. Nobody could know this better than a Court. Such officer represents the will.

Congress retained in the Act every case of awards to an executor or administrator with the will annexed.

It *singled* out assignments in bankruptcy. By the clearest rules of construction every *other* case of assignment, whether by will or otherwise, was approved. The explicit condemnation of one class is by the clearest implication proof that there is no condemnation of the rest.

If, therefore, the requirement of this subordinate condition of a certificate has no application in case of wills; if it is absurd to ask a Court to certify that an executor represents not the will but next of kin,—living, non-owning next of kin; why is it not the plain sensible construction of this second clause to say that from the very nature of the case there is no requisition of the certificate in case of wills.

Is it not common sense to say that the certificate was not to be required in cases where it was absurd and where it could not be expected to be given?

If Congress intended in case of wills to put on a condition that could not be complied with, *they would simply have directed non-payment in such cases, or made a special arrangement in such cases, as in cases of adjudicated bankrupts*, and this they did not do.

There are plenty of cases of individual claimants for the operation of this requisition of the certificate on the theory of the non-owners.

It is the duty of the Court to construe this second clause narrowly as all provisos are construed; to construe it *not to defeat the Act, but to carry it into effect;* and we say that where the requirement of the certificate is insensible—utterly lacking in aptness and appropriateness—it is according to good sense to hold that it does not apply to such cases, and that therefore wills and partnerships are outside its requirements and *are governed by the body of the Act* directing payment.

The body of the Act controls unless the proviso clearly creates an exception.*

G.

For the sake of argument, let it be admitted that the individual claimants in the second clause are all the claimants, except the corporate claimants, and that the suggestion in Hooper's case is erroneous.

1. On these suppositions, very clearly the word "represent" in the second clause is not used in its technical, legal sense.

As above stated, personal representatives technically can only represent dead persons: that is to say, be executors or administrators of the estates of dead persons.

But the personal representatives in the second clause are clearly executors and administrators of the original owners, or of assignees in fact, or by subrogation, of the original owners of the claims, and somehow, these executors and administrators, as such, are to represent the next of kin on the theory now being considered.

This requires that the word "represent" be understood in its loose, popular sense, a sense which supposes that the next of kin are to have their *rights enforced through the personal representatives.*

2. The interesting question then is, who on this theory are the next of kin mentioned in the second clause of the

* See Clark's Appeal, 58 Conn., 207; United States v. Dickson, 15 Pet., 141.

proviso. Are they the persons who were the next of kin of the original owners, or of the assignee of such owner, or are they the present living next of kin of such owners or assignees? Are they the persons who were the next of kin to the persons whose estates are being settled, and to whose administrators or executors this money is to be paid? If not, who are they?

We say that "the next of kin" are the persons, dead or living, who were the next of kin of the original owner or assignee at his death.

Our adversaries say that they are the next of kin who were living March 3d, 1891, the date of the Appropriation Act.

a. The proviso does not state that the "next of kin" are living next of kin of the date of the Act, and the Courts should require such a construction as to the class of persons who are to be understood as next of kin as will be just and fair, for it must be presumed that Congress intended to be just and fair in the matter.

Now, we have seen in the Appropriation Act as passed that Congress recognized in the "Humbird" case the rights of the assignee of the original owner; recognized in the Brooks and other cases the rights of the assignee of private insurers of the original owner, and recognized in some cases the rights of the insurance companies. Therefore we see that Congress did not have that respect for the mere blood of the original owner which our adversaries claim.

If Congress respected the assignment of the original owner, it is difficult to understand why Congress should not respect the will of the original owner, which in substance is nothing but an assignment.

If Congress recognized the assignee of the original owner, and the assignee of the insurer of the original owner, it cannot for one moment be supposed that Congress had any regard to the mere blood of the original owner, and therefore it is difficult to see how Congress could regard the original title by assignment and disregard subsequent titles by assignment, as it must be held to have intended to do *if the living next of kin are to take irrespective of title.*

b. There is no equity in taking the date as of March 3d, 1891, and it is only claimed that date must be taken, and that then living next of kin were intended, because there is no date stated in the Act.

c. Besides, it is impossible to carry out any sensible idea of taking the next of kin as of any other date than the deaths of the several original owners of the claims, or of their original assignees.

Death does not remove people in the order of their birth. There are surviving in the present generation various degrees of kin to William Leffingwell and Hezekiah Beers Pierrepont, as the records show.

The Footes, the plaintiffs in error, do not stand in the class of the next of kin. The present Leffingwells are one degree

nearer to William Leffingwell than the Footes. The mother of the Footes would have stood in the same degree of nearness as some of the present Leffingwells.

The present Leffingwells are not all in the same degree of nearness to William Leffingwell.

Take the Pierrepont estate: Some of the children of Mr. Pierrepont survived on March 3d, 1891, and were living at the date of the distribution by the Surrogate's Court in Brooklyn.* They alone were the next of kin.

What has happened in these two instances probably has happened in almost all other cases.

If we are to take the next of kin literally, according to this proviso, it would be a great injustice and be very unfair; and because of such injustice and unfairness, the Court would probably hold to some construction which would be just and fair; and we say that there is no construction which is really just and fair except that which causes the class of the next of kin to be taken as of the death of the original owners.

d. Let us take the words of the second clause literally; Personal representatives are to be certified to by the Court of Claims as representing the next of kin, and we are to suppose that the word "represent" is used in its loose, popular meaning, viz.: that those are "represented" who are to take from the personal representatives.

Now who take from the personal representative of the

* Exhibit 7, Record, pages 43 and 44.

original owner or of his assignee? Who take from the "personal representatives" in whose name the awards are made?

Living next of kin in the legal distribution of these estates cannot take *directly* from such personal representatives, unless they were persons who were next of kin of the deceased testate or intestate.

Personal representatives, in case of no will, pay to the next of kin of the deceased, if living; if not, pay the administrator or executor of such next of kin as are dead.

Personal representatives of the original owners or of the original assignees of such owners, must necessarily treat with only that class of next of kin as were next of kin at the death of the deceased whose estate they represent.

We regard this suggestion as conclusive that, on the theory we are considering, the next of kin mentioned in the second clause of the proviso must be taken as of the death of the testate or intestates whose estates the personal representatives are administering.

The Court of Claims is to certify that the personal representatives, on whose behalf the awards have been made, represent the next of kin.

The Court of Claims had said that it was impossible for it to determine who were the living next of kin of the original owner even as matters of fact.

This proviso must be read with reference to such de cision of the court and with reference to a common sense view of the matter.

e. Very clearly the first clause of the proviso refers to the next of kin of the original owner, as at the date of his death.

> "PROVIDED, however, that in the cases of adjudicated bankrupts the award shall be made on behalf of the next of kin, instead of on behalf of assignees in bankruptcy."

Here, as above stated, the next of kin are set off against the assignee in bankruptcy, and as one was dead the other was dead, or was supposed to be dead.

f. Moreover, *and what is one of the most important considerations in the construction of this proviso, the third clause of the proviso makes it absolutely certain that the proviso contemplated none other than the distribution of this fund, according to the rules of distribution prevailing in the Court under which administration had been taken out.*

The Secretary of the Treasury is to be certified that the Courts which granted the administrations have required adequate bonds for the LEGAL distribution of the fund.

Here is the clearest proof that none other than the legal distribution is intended.

g. Moreover, in the case of William Leffigwell, the administrator with the will annexed now substantially represents the next of kin of William Leffingwell, as if William Leffingwell had died intestate. Such also was the case of the administrator with the will annexed of Mr. Pierrepont.

This fund, in the case of the Leffingwell estate, will be now divided equally among the five lines of descent, and so it would have been, and was done, in the case of the Pierrepont Estate.

It is true that by William Leffingwell's will, the fifth share of the residue in case of the line of Lucius W. was given directly to the children of Lucius W., then living, and for the most part still living.

But this fact does not affect our argument as to the meaning of the phrase next of kin in this proviso, which is not drawn with reference to any one case.

h. If as to this fifth share, about which this dispute is concerned, the certificate of the Court of Claims was erroneous, what then?

1. We say that it has no effect upon the disposition to be made of the money when paid.

In the subordinate proviso, Congress, as a condition of payment, called for a certain certificate. If obtained, payment would be made according to the "finding and award" of the Court of Claims, and legal distribution would be made of the money.

2. Congress made no provision about the hearing on the question of issuing this certificate.

The Court of Claims decided (Adams *vs.* U. S., 26 Ct. of Claims, 294) that no re-hearing or appeal or review could be had of its action in regard to the issue of this certificate.

If it was correct it was so and if incorrect it must remain so.

This is the true review of the action of the Court in issuing the certificate. As will be afterwards shown, the condition of getting this certificate is a condition put up by the debtor, and he agrees to pay if it is obtained, and he agrees not to question the correctness of the certificate.

But when payment is made, it is made to the executor or administrator according to *title*, and provision is made in the third clause for *legal* distribution.

In other words the United States treat all certificates, correct or erroneous, alike. The certificate is only a condition of payment; only designed to suspend action in some possible cases. It cannot be supposed that it affected the quality or nature of the act of *paying* or the title to the money after it was paid.

But this little provision for the certificate, like the speck of a cloud in the sky, has been thought to spread over the whole heaven *because it and it alone is in the eye-sight of the non-owners.*

3. But there was no certificate that Oliver White represented the next of kin of William Leffingwell. It was not required by Congress and no other requirement (if there had been any) would have the least significance.

No clause of the proviso affects this fund in the hands of Mr. White, as *representing the claim of the estate of one partner upon the estate of the surviving partner.*

The proviso does not authorize the executor or administrator to make an *illegal* distribution or confer a title on a non-owner. If the executor or administrator got no title from the United States, the owners in the mere blood will get no title.

4. Lucius W. died intestate. The practical result is the same whether the fifth share is paid to an administrator of Lucius W., and by him distributed to his children, or whether it is paid under the will directly to the children.

5. Moreover, we are not concerned with that share; we have no title to it; it is not in contest.

H.

The practical construction put upon this proviso by the Court of Claims corroborates our argument.

On the hearing before the Court of claims for the certificate, the United States, by its counsel, was entirely satisfied by the production of the will of Mr. Pierrepont that the executor of the will represented the next of kin of Pierrepont.

The only objection of the United States in the case of Leffingwell was to the hearsay evidence that Mr. White, without producing the will of Mr. Leffingwell, would distribute this fund equally to the five estates of the persons who were next of kin of William Leffingwell at his death.*

* Deposition Wm. Henry Leffingwell filed in the Court of Claims, on the application for a certificate. Record, pages 27 and 28.

Of course there is a great deal of contention as to what the meaning of "next of kin" in the second clause may be, and therefore we do not expect attorneys in putting in their evidence to rest solely upon what clearly was regarded by the Counsel for the United States on the question of the certificate, as the construction of the phrase. Yet it is quite satisfactory to observe that such counsel understood that if, through the wills, the fund would go to the persons or the estates of persons who were the next of kin of Pierrepont and Leffingwell, the certificate of the Court of Claims would be rightly granted.

So, the certificate of the Court of Claims certified that the administrator, with the will annexed of Mr. Pierrepont, represented the next of kin of Hezekiah B. Pierrepont, the owner of the claim. From such ownership the Leffingwell estate would receive its half.

So, too, the Treasury Department treated the administrator with the will annexed of Hezekiah B. Pierrepont, surviving partner of the firm of Leffingwell & Pierrepont, as the legal owner of the claims.

So, too, the Court of Claims has certified in the Peter Chardon Brooks cases, where Brooks was an assignee of private insurers, that in such case the next of kin referred to were his next of kin, and not the next of kin of the original insurer, much less owner.*

* Adams, *Admr.*, *v.* United States, 26 Ct. of Cls. R., 249; so in the Humbird Case, see Book Exhibit 5, page 214.

I.

1. *If this proviso had been intended to create a rule of distribution, and therefore a new one, different from the ordinary rule of ownership, it would have been drawn in an altogether different manner.*

If Congress had intended to say that these funds should be paid to living next of kin of the persons represented by the personal representatives, it would have been impossible to have drafted such intention in the language of this proviso.

On the other hand, it would have been impossible to fail of expressing such an idea in simple language.

The idea itself is extremely simple, and the proviso would have read substantially as follows:

> "PROVIDED that in all cases mentioned in this Act, except those of corporations, the personal representatives in whose behalf the award shall be made, shall pay these funds to the living next of kin of the persons whose estates they represent."

If such had been the intent of Congress, the first clause of the proviso is entirely superfluous and the third clause is totally absurd, a new bond would have been required to distribute the fund according to the new law of the proviso. Besides such an intent revolutionizes the whole body of the Act.

The failure to express the intent claimed by our adversaries in simple language is conclusive proof that Congress had no such intent.

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* Durkee, *Admr.*, *v.* United States, 28 Ct. of Cls. R., 326.

2. Had Congress intended to charge upon the personal representatives the duty of paying living next of kin by force *of this Act of Congress;* if Congress had intended that the title to the fund should pass directly to the living next of kin by this appropriation act there would have been:

a. Surely some contemporaneous statement showing such extraordinary intention; for upon this theory the claim of the original owner would never have been paid.

b. There would have been apt language to express such an intent.

c. Congress would never have enforced the distribution of this fund through the Probate Courts of the States, but would have employed its own agents.

d. At least would have required a return to be made to the Treasury Department that the money had been so paid pursuant to its mandate.

e. And never would have been guilty of the folly of requiring the Courts of Probate to see that the personal representatives HAD given bond to administer the fund according to *the usual course of legal proceedings prevailing in the Court which appointed the personal representative.* It is assumed, that the bonds, *as already given years before,* express the obligation and duty of these personal representatives, with regard to the money to be paid them, from these awards. *Indeed the third clause of the proviso completely upsets the whole theory of the non-owning living next of kin.*

J.

In cases of awards by the Court of Claims, where there are no next of kin of the original sufferers, Congress has not yet said by any general law what shall be done. It has simply said that it will not pay these awards now, and has interposed the want of the certificate from the Court of Claims as a bar to their present payment.

In the case of Durkee *vs.* United States, decided April 24th, 1893, the original owner had died, leaving all of his property to his widow by will, but no known next of kin. Her administrator had prosecuted the claim in the Court of Claims under the Act of 1885, and the award had been reported to Congress. After the Appropriation Act of March 3d, 1891, the administrator of the original owner appeared before the Court of Claims, with the consent of of the administrator of the widow, and sought to be substituted as claimant. This the Court denied, upon the ground that under the proviso there must be next of kin, and there were none to be found, and Congress has not in such case yet decided what to do with the payment of the award or appropriation. Durkee's case is perfectly consistent with the decision of the Court of Claims in the Hooper case in the same volume, the difficulty in the Durkee case being not the *right* of the widow under the will of the original sufferer, but that the case does not come within the class of cases where Congress has permitted the appropriation to go into effect.

The subsequent special legislation of Congress furnishes no particular light upon the matters in issue.

The Act of Congress, approved March 3d, 1893, 27 Stat. L., 674, and the staute passed Second Session Fifty-third Congress, 28 Stat. L., 487, both refer to the Wattles case. By the first act, the appropriation was to be paid to the administrator of Wattles on a certificate that there was a widow, and that the widow was "so represented" by such administrator, but the money was to be paid to the persons whom the Court of Claims should find *entitled* thereto, of course, as claiming from Wattles.

Probably there was no person found who could so claim title from Wattles, and the next Congress passed a special Act directing the award in this case to be paid to the executor, personal representative (i. e. administrator) *or* next of kin of the widow. This language is very confusing, but means that the payment is to be made to the executor of the will of Mrs. Wattles, if she left a will, and if not, to her administrator, which would be in substance a payment to her original next of kin.

There is no recognition of any right of *living* next of kin. The widow is substituted for the original sufferer, and title to the fund is to be traced to and from the widow. The widow is so substituted just as in case of brnkrupt original sufferers when original next of kin are substituted for such original sufferers.

Congress, in the Wattles case, deemed that it best discharged the obligation of the United States by substitu-

ting his widow and those claiming title from her in place of Wattles, because there was no one claiming title from Wattles.

In those cases, apart from bankrupts, where there is no one to claim title from the original sufferer, Congress may or may not follow the Wattles case. Its action in the Wattles case, however, does not benefit but hurts the claim of *living* next of kin for it shows that Congress does not at all recognize *living* next of kin as recipients of bounty.

In the case of John Gilliat, 2 Session, Fifty-third Congress, 487, the administrator is directed to pay the amount of the appropriation "to the person or persons entitled to recover and receive the same, to be ascertained by the Court of Claims upon sufficient evidence, and certified to the Secretary of the Treasury"; this expresses a clear intent that the money should be paid to those legally entitled thereto.

An attempt was made in the Fifty-second Congress and again in the Fifty-third Congress to secure appropriations for French Spoliation Awards reported by the Court of Claims.

In each instance the appropriation failed to pass both branches of Congress.

The appropriation acts each had a proviso following the list of awards, as in the Act of 1891. It was identical in both cases, and was as follows:

"PROVIDED, that in all cases where the original

sufferers were adjudicated bankrupts *or insolvents, or made voluntary assignments for the benefit of creditors*, (the) awards shall *hereafter* be made on behalf of the next of kin, *or to those entitled under the wills of the original sufferers or the wills of those who take thereunder*, instead of *to voluntary assignees*, or to assignees in bankruptcy, and the awards in the case of (the) individual claimants *herein appropriated for* shall not be paid until the Court of Claims shall certify to the Secretary of the Treasury that the personal representatives on whose behalf the award is made represents the next of kin *or legatees as aforesaid*, and the Courts which granted the administrations, respectively, shall have certified that the legal representatives have given adequate security for the legal disbursement of the awards."

So far as changes appear in the proviso they are simply explanatory. It cannot be supposed that Congress intended to change the principles, or policy, or rules, under which the appropriations were made in 1891.

K.

There is no force whatever in the claim that a different rule of distribution prevails, because Oliver S. White was appointed administrator under the provisions of the Connecticut statute concerning administrations, in the cases of the French Spoliation claims.

This statute was passed in 1885, long before this proviso was thought of.

By its very words it clearly contemplates nothing but the *legal* distribution of the fund to be collected, accord-

ing to the laws of the State, which laws certainly do respect the wills of testators and the rules of ownership.

It was passed simply and solely to facilitate the *appointment* of administrators in such cases. At that time the possibility that only living next of kin of the original owner, irrespective of title, would receive the proceeds of the claim, would have been regarded as absurd.*

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* This Connecticut statute was passed in 1885, it was amended slightly in 1886, and is as follows: the words in brackets being added by the amendment of 1886, "Sec. 1. Whenever it shall appear that any resident of this State had, at the time of his death, any claims against the United States Government of the class commonly known as the French Spoliation Claims, the Court of Probate which now has jurisdiction over the district where such person resided at the time of his death, *shall*, [may], on application of any person claiming to be interested in such claims [claim], appoint an administrator upon the estate of said original claimant, whether administration has been heretofore granted thereon or not, [and whether there be an administrator or administrators now living and capable of acting, to whom administration has been granted thereon or not, without requiring the resignation of such administrator or administrators who may be living], to the end and purpose only of taking all proper and reasonable measures to prosecute and collect such claims and dispose of the proceeds thereof according to law.

"Sec. 2. Before any such appointment shall be made, such Court of Probate shall order public notice of the pendency of the application and of the time and place fixed for the hearing upon the same, to be given in such manner as said Court shall find most likely to furnish information thereof to the persons interested in such claims." See Public Acts, 1885, Chap. XVIII, page 419; Public Acts, 1886, Chap. XLV, page 575. Its object was to *facilitate the appointment* of administrators in these cases.

Under the General Statutes in force at that time, seven years from the time of decease was the limitation within which administration could be granted on application to the Probate Court, and when it became necessary to procure letters of administration after that time, it was customary to resort to the legislature for a special act, authorizing the proper Probate Court to issue letters of administration in such particular case. This act was passed to avoid the necessity of applying to the legislature in these cases.

IV.

The weight of authority is against the plaintiffs' contention.

That claims of this general character are *property*, subject to the general laws governing the devolution of property, has been conclusively established by the decisions of this Court in several important cases.*

The anology between the facts in *Comegys* vs. *Vasse* and the case at bar is most notable.

Vasse was an underwriter on various vessels and cargoes, the property of citizens of the United States, which were captured and carried into the ports of Spain and condemned. The owners abandoned the vessels and cargoes, and Vasse, the underwriter, paid the losses. He subsequently became embarrassed, and upon the petition of his creditors was adjudicated a bankrupt under the bankruptcy law of 1800. Under the treaty with Spain of February 22, 1819, on account of these captures and losses, the Commissioners, sitting at Washington, made an award of some eight thousand dollars to the surviving assignee in bankruptcy. The contention was that the right to this award was not *property*. It was contended, (1) that the abandonment by the owners did not vest in the underwriter the right to the indemnity, and (2) that

* Comegys *v.* Vasse, 1 Peters, 193; Milnor *v.* Metz, 16 Peters, 221; Erwin *v.* United States, 97 U. S., 392; Phelps *v.* McDonald, 99 U. S., 298; Williams *v.* Heard, 140 U. S., 529.

the right to the indemnity did not pass by the assignment in bankruptcy to the assignee. Both these contentions were overruled by this Court. A further consideration of this and other cases to which we desire to call especial attention will be found in the notes.*

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* There is no difference in principle between the indemnities paid under the Spanish Treaty of 1819, and the indemnity in the case at bar, paid under the French Treaty of 1800. In the Ninth Article of the Spanish Treaty, it is provided: "The high contracting parties reciprocally *renounce* all claims for damages or injuries which they themselves, as well as their respective citizens and subjects, may have suffered until the time of the signing of this treaty." By the French Treaty of 1800, "the two States *renounce* respectively the pretentions which are the subject of this treaty."

The Eleventh Article of the Spanish treaty, specially provided that the United States, exonerating Spain from all demands in the future, on account of claims of their citizens, to which the renunciations therein contained extended, and considering them entirely cancelled, undertook to make satisfaction for the same, to an amount not exceeding five millions of dollars. To ascertain the full amount and validity of these claims, a commission, to consist of three commissioners was appointed, and within the space of three years from the time of their first meeting, were to receive, examine and decide upon the amount and validity of all claims. In considering the question whether these awards under the Spanish Treaty were in the nature of donations or indemnity, Judge Story in the opinion, effectually disposes of the donation theory. His reasoning is entirely applicable to the case at bar. The case of Campbell *v.* Mullett, 2 Swanston, *551, had been cited in support of the donation theory. In disposing of that case, the opinion proceeds as follows:

"In that case, the compensation had been awarded by the commissioners, under the British Treaty of 1794, to American citizens, for unjust captures made by British cruisers; and there had been condemnations by the highest appellate courts of prize. One argument was that the compensation so granted was not to be deemed a mere donation to the parties who received for their own use, but an indemnity. The Master of the Rolls, in answer to this said: 'It is said that the sums awarded by the Commissioners are not matter of bounty or donation. Can they be a matter of right? What is right? That which may be enforced in a Court of Justice. Had the parties, whose property was condemned by irrevocable sentence, any right? What they obtain after that condemnation, is not founded in right, but in policy between the nations, providing compensation to individuals who have lost property by sentences which are thought unjust. The grounds of relief before the commissioners are the want of any redress in any municipal courts. Whatever the individual obtains is not on the ground of right or private

The principles of law involved in this controversy are settled by the case of Williams *vs.* Heard, 140 U. S., 529.

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property, but of hardship and injustice. Though this, therefore, is not a case of pure donation, as of a gift, without anything in the nature of a consideration, yet, for the purpose of being contrasted with property or right, it is a donation, not a restoration of a former right, but from a new fund belonging to an independent authority, a grant to the sufferer for what he lost.'

"Such," says Judge Story, "is the language of the learned Judge, and we cannot say that the reasoning is at all satisfactory. It is not universally, though it may ordinarily be one test of right, that it may be enforced in a court of justice. Claims and debts due from a sovereign are not ordinarily capable of being so enforced. Neither the King of Great Britain nor the Government of the United States is suable in the ordinary courts of justice, for debts due by either. Yet who will doubt that such debts are rights? It does not follow because an unjust sentence is irreversible, that the party has lost all right to justice, or all claim upon principles of public law to remuneration. With reference to mere municipal law, he may be without remedy; but with reference to principles of international law, he has a right both to the justice of his own and the foreign sovereign.

The theory, too, that an indemnification for unjust captures is to be deemed, if not a mere donation, as in the nature of a donation, as contrasted with right, is not admissible. It is reasoning against the clear text of the treaty itself. What says the treaty of 1794, Sec. 7? That where American citizens have sustained losses or damages 'by reason of irregular or illegal captures, or condemnations of their vessels or other property, under color of authority or commissions from His Majesty, and adequate compensation cannot be obtained by the ordinary course of Judicial tribunals, full and complete compensation for the same will be made by the British Government to the said complainants.' The very ground of the treaty is that the municipal remedy is inadequate; and that the party has a right to compensation for illegal captures by an appeal to the justice of the Government. It was never understood that the case was one to which the doctrine of donation applied. The right to compensation in the eye of the treaty, was just as perfect, though the remedy was merely by petition, as the right to compensation for an illegal conversion of property in a municipal court of justice. The case of Randal *v.* Cockran, 1 Ves., 98, stands upon the true ground. It considers the right of indemnity as travelling with the right of property. In that case it might have been said in answer to the claims of the underwriters, that they had no title because it was a case of donation by the Crown out of funds provided by reprisals. So perhaps, the commissioners thought, but Lord Hardwicke decided otherwise. There cannot be a doubt that if the party injured had died before or after the treaty was made, and compensation had been subsequently decreed, it would have been assets, and distributable as such, in the hands of his executors and administrators. The remarks which

In this case the defendants in error originally brought an action of assumpsit in a Massachusetts Court against

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have been made upon this case, are equally applicable to the provisions for indemnity under the treaty with Spain. It recognized an existing right to compensation in the aggrieved parties, and did not, in the most remote degree, turn upon the notion of a donation or gratuity. It was demanded by our Government as a matter of right, and as such, it was granted by Spain."

The decision in Comegys *v.* Vasse, and the reasoning of Judge Story in his opinion in that case, were subsequently followed by this Court with express approval, in Milnor *v.* Metz, 16 Peters, 221.

In this case Milnor had a claim against the Government for extra services performed as gauger at the port of Philadelphia, which services became necessary under an Act of Congress reducing the duty on wines, then in custom stores in that port. Being a second measurement, no express law or regulation of the treasury department fixed the fees. His demand was therefore rejected by the accounting officers. The equity of his claim was free from doubt.

Milnor, in January, 1839, made a general assignment in insolvency to Metz, the defendant. Subsequently, in 1840, Congress passed an Act reimbursing Milnor and ordering the Secretary of the Treasury to pay his claim. Both Milnor and his trustee in insolvency applied to the Treasury for the money. Metz, the trustee, filed a bill enjoining Milnor from receiving the money. The injunction was made permanent, and the case was brought by Milnor's appeal to this Court, where the decree of injunction was affirmed. This Court, following Comegys *v.* Vasse, and commenting on that case with approval, held that the claim of Milnor upon the Government for extra services rendered by him, was property and passed to his assignee, by the assignment in insolvency. The contention of the plaintiff was that the appropriation made by Congress to pay his claim was in the nature of a gratuity, and relied upon the case of Emerson *v.* Hall, 13 Peters, 409, in support of that contention.

In the latter case, Emerson, Chew and Lorrain, were respectively surveyor, collector and naval officer of the port of New Orleans. They libelled a slave ship and caused her to be condemned, and in the Court below, were awarded one-half the proceeds of the ship and cargo. The decree was, however, reversed by this Court on the ground that Emerson, Chew and Lorrain, as officers of the Government had no right as captors, and that they stood on the footing of an officer of the Government who made a military seizure. After Emerson's death, Congress passed an Act bestowing upon his legal representatives, together with Chew and Lorrain, one-half the condemnation money. Hall, the plaintiff, was a creditor of Emerson, and filed his petition in the Probate Court for the payment of his debt out of the moneys received under the Act of Congress. The Probate Court and the Supreme Court of Louisianna, on appeal, gave judgment for the creditor, but on a writ of error to this Court judgment was reversed, on the ground that Congress gave the

their assignee in bankruptcy, to recover the amount of an award that had been paid to the assignee by the

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money to Emerson's heirs as a gratuity because of the meritorious conduct of their father. The Court say: "He acted under no law, nor by virtue of any authority. His acts impose no *obligation*, either in law or equity, on the Government. Had he been sued by the Government for a debt due to it, he could not have set up his services either as an equitable or legal set-off. His services were held to be like those of an individual who, by timely exertion, saves public property from destruction by fire, or like the case of a pension given to heirs for the military services of the ancestor, and so on the theory of of a gratuity or bounty, the beneficiaries under this Act of Congress, for their special relief, hold the donation against the creditors of their father."

Emerson *v.* Hall is therefore a clear case of bounty, and as such is distinguished from the case at bar, as well from Comegys *v.* Vasse, Milnor *v.* Metz, and numerous other decisions of this Court.

Another case following Comegys *v.* Vasse, and citing it with approval, is Erwin *v.* U. S., 97 U. S., 392.

The plaintiff had a claim against the United States for cotton belonging to him seized by the military forces of the United States, in Savannah, in February, 1865, the proceeds of which were paid into the treasury. In January, 1873, he brought suit against the Government therefor, in the Court of Claims. Before the case was heard, however, this Court decided (Haycraft *v.* U. S., 22 Wall., 81), that the Court of Claims had no jurisdiction to hear and determine claims of this character, unless a suit was brought within two years after the suppression of the rebellion. Upon learning this decision, the plaintiff petitioned Congress for relief, and a special Act was passed authorizing the Court of Claims to take jurisdiction of this particular case, for the reason, as the Act says, that by the mistake of his attorney, and without fault or neglect on his part, he had failed to file the claim within the time limited. Erwin thereupon filed an amended petition in the Court of Claims, which the Court, after hearing had, dismissed for the following reasons:

It appeared that the plaintiff had gone into bankruptcy in 1868, and had subsequently purchased from his assignee in bankruptcy, all his remaining and uncollected assets. The schedule which contained as one of its items, this claim against the Government, had been in some manner removed from the papers, so that the assignee in bankruptcy had no personal knowledge that this claim existed as an asset, when he made the sale to the appellant, and it was accordingly found that by reason of this fact, no title to this particular asset passed from the assignee in bankruptcy, to the plaintiff. The Court of Claims therefore held that the plaintiff had no title to this claim, and dismissed his petition. Upon the plaintiff's appeal to this Court, his contention in substance was that his claim against the Government for the seizure of this cotton, was not a claim of property, and never passed to his assignee in bankruptcy. This argument was held by this Court to be unsound.

United States Government, under the Act of Congress of 1882, which recognized the Court of Commissioners of Alabama Claims for the purpose of permitting those of

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In the opinion, Mr. Justice Field says:

"Claims for compensation for possession, use or appropriation of tangible property constitute personal estate, equally with the property out of which they grow, although the validity of such claims may be denied, and their value may depend upon the uncertainties of litigation, or the doubtful results of an appeal to the legislature. A claim of a bankrupt which is outlawed must go the assignee, for exigencies may arise in many ways which will give a value to it. Demands against the Government if based upon considerations which would be valid against individuals, such as services rendered, or goods taken, are property, although there be no Court to investigate and pass upon their validity, and their recognition and payment may depend upon the caprice or favor of the Legislature."

The opinion then proceeds with a favorable comment upon the opinion of Judge Story in Comegys *v.* Vasse, and concludes by affirming the judgment of the Court of Claims, dismissing the petition on account of the plaintiff's lack of title.

In Phelps *v.* McDonald, 99 U. S., 298, the question was whether or not a claim against the United States for cotton belonging to a British subject, destroyed during the Civil War, and which had been established and allowed by the joint British and American Commission, organized under the Treaty of May 8th, 1871, had passed by the assignment in bankruptcy of the original claimant. Again in this case, the property character of claims of this class is thoroughly considered and the decision affirms the contention that the claim was property, and passed to the assignee in bankruptcy.

Mr. Justice Swayne, in delivering the opinion of the Court, refers at length and with approval to Comegys *v.* Vasse, and in referring generally to this class of claims says:

"There is no element of donation in the payment ultimately made in such cases. Nations no more than individuals make gifts of money to (foreign) strangers. Nor is it material that the claim cannot be enforced by municipal law which authorizes such proceedings. In most instances, the payment of the simplest debt of a sovereign, depends wholly upon his will and pleasure. The theory of the rule is that the Government is always ready and willing to pay promptly whatever is due to the creditor. It is but a short time since our Government could be sued, and it can be done now only in the special circumstances defined by the statute It is enough that the right exists when the transfer is made, no matter how remote or uncertain the time of payment, The latter does not affect the former nor has an adverse decision any final effect. If the payment be just and recognized as valid by the law of nations, the claimant or his Government, if the latter chooses to do so, may still press it upon the attention of the alien Government."

our citizens who had claims for increased premiums of insurance paid by them for war risks, to prove their claims against the unexpended balance of the fifteen and one-half millions of dollars that had been paid to the United States by Great Britain pursuant to the award of the Geneva arbitration.

This class of claims had been expressly disallowed and excluded by the Geneva tribunal in making its award, nor had they been allowed by the Court of Commissioners in the first instance, and only obtained recognition when in view of the unexpended balance, the Court was reorganized and empowered to consider them by the act of 1882.

The Supreme Court of Mass., one judge dissenting, had held that the money so paid by the United States constituted a *gift* to the one who paid the premiums, and did not pass by a prior assignment in bankruptcy, Heard *vs.* Sturgis, 146 Mass., 545.

This Court on a writ of error, however, reversed that decision.*

"If a thing be assigned, the right to collect the proceeds adheres to it, and travels with it whithersoever the property may go. They are inseparable. Vested rights, *ad rem* and *in re*, possibilities coupled with an interest, and claims growing out of property—pass to the assignee. The right to indemnity for unjust capture or destruction of property, whether by a Government or individual is clearly within this category."

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* It had been decided in New York, Taft *vs.* Marsily, 120 N. Y., 474; in Maryland, Brooks *vs.* Ahrens, 68 Maryland, 212, and Maine, Kingsbury *vs.* Mattocks, 81 Maine, 310, that such allowances for war premiums under this Act of 1882 must be regarded as a gratuity, and that the original owner, and not his assignee in bankruptcy, was entitled thereto. In Williams *vs.* Heard these opinions are referred to. On page 540, in rendering the opinion of the Court, Mr. Justice Lamar says: "Was the claim in this case property in any sense of the term? We think it was. Who can doubt but

The doctrine of Comegys *vs.* Vasse was most favorably reviewed in the opinion of Mr. Justice Gray, when as Chief Justice of the Supreme Judicial Court of Massachusetts, he rendered the opinion in Leonard *vs.* Nye, 125 Mass., 455. This was a contest between a claimant and his

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that the right to prosecute this claim before the Court of Commissioners of Alabama Claims would have survived to their legal representatives had the original claimants been dead at the passage of the Act of 1882? If so, the money recovered would have been distributable as assets of the estate. While, as already stated, there were no means of compelling Congress to distribute the fund received in virtue of the Geneva Award, and while the claimant was remediless with respect to any proceedings by which he might be able to retrench his losses, nevertheless, there was at all times a moral obligation on the part of the Government to do justice to those who had suffered in property. * * * There was thus at all times a possibility that the Government would see that they were paid. There was a possibility of their being some time payable. They were rights growing out of property: rights, it is true, that were not enforceable until after the passage of the Act of Congress for the distribution of the fund. But the Act of Congress did not create the rights. They had existed at all times since the losses occurred. They were created by reason of losses having been suffered. * * * The claims in this case differ very materially from a claim for a disability pension, to which they are sought to be likened. They are descendible; are a part of the estate of the original claimants, which, in case of their death, would pass to personal representatives and be distributable as assets, or might have been devised by will, while a claim for a pension is personal and not susceptible to passing by will, or by operation of law, as personality.

"Neither do we think that the money appropriated by Congress by the Act of 1882 to pay these claims should be considered merely as a gratuity. On this point we can do no better than to quote the language of the learned Judge of the Court below, who delivered the dissenting opinion. He says: If Congress intended by these statutes to appropriate the money to certain persons as a gratuity, the only matters for the Court of Commissioners to deal with would have been the persons intended by the Statutes, and the amounts given to each, and it is difficult to see how a judicial court could re-examine the distribution made by the Court of Commissioners, unless the persons to whom that Court awarded the money claimed and received it in some representative capacity. *The judicial courts determine the ownership of the money awarded, only on the ground that it follows the ownership of the property, as compensation for which the awards are made.*' 146 Mass., 554–555."

assignee in bankruptcy in respect to a *direct* claim under the Geneva arbitration for the destruction of a ship and cargo by one of the insurgent cruisers. The petition to the Court of Commissioners of Alabama Claims had been filed and presented by the sufferer and the award had been made to him. The plaintiff was his assignee in bankruptcy who brought action to recover this amount as money had and received. Judgment was rendered for the plaintiff, and affirmed by the Supreme Court of Massachusetts.*

Two decisions of the Supreme Judicial Court of Maine

* We quote from the opinion in Leonard *vs.* Nye, on page 465, as follows: "The claims for the destruction of property of citizens of the United States by the Alabama and the Florida, etc., through the violation by Great Britain of her international duty, were claims for which the owners of the property destroyed were justly entitled to compensation from Great Britain although they could not obtain their rights in the ordinary course of judicial proceedings, but only by petition to the British Government, or through the intervention of their own Government. Compensation for those losses was demanded by the United States from Great Britain as a matter of right, and as such was awarded by the decision of the Tribunal of Arbitration created by the treaty between the two Governments. The act of Congress for the adjudication and disposition of the moneys received from Great Britain pursuant to that decision provided for their application to the payment of claims directly resulting from the damage caused by those insurgent cruisers; and the sum awarded to this defendant by the Commissioners appointed under that act of Congress was upon such a claim. It must therefore be treated as awarded and paid to him by reason of his interest in property so destroyed, and of his right to compensation for its destruction, and as capable of passing by assignment from him in any form recognized by law, though made after the destruction of the property and before the award of indemnity."

concerning the Alabama claims also support our contention.*

We refer also to the opinions rendered in the State Courts in the three cases now under consideration.†

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* Grant *v.* Bodwell, 78 Me., 460.

One Mrs. Cables was part owner in a vessel destroyed by one of the Confederate cruisers. She died intestate leaving an only daughter who died in her minority, unmarried, without issue, leaving her grandmother, Mrs. Prescott, her sole heir. Mrs. Prescott died testate. When provision was made by Congress for the payment of these "Alabama" claims, the administrator of Mrs. Cables the sufferer, successfully prosecuted the claim. The contention arose over the distribution of this award. The Probate Court ordered the distribution among the intestate's *next of kin then living*. On appeal to the Supreme Court at *nisi prius*, the order was reversed, and distribution was ordered to the estate of the grandmother, Mrs. Prescott. On appeal to the Court of last resort, this decree was adjudged erroneous as as well as the original decree of the Probate Court, and distribution was ordered to the estate or legal representatives of the deceased daughter. "The decree," the Court say, "must conform to the statute." Any other decree was beyond the power of the Judge of Probate, and would afford no protection to the administrator. The opinion also considers the character of claims of this class, holding them to be property, belonging to the estate of the sufferer, and subject to the same rules of distribution as any other estate. Comegys *v.* Vasse, and the other decisions of this Court upon this subject are cited with approval.

To the same effect is Pierce *v.* Stidworthy, 79 Me., 234. Like Grant *v.* Bodwell, this was a contention as to the disposition of an award made by the Court of Commissioners of Alabama Claims to the administrator with the will annexed, of a sufferer whose vessel was destroyed by one of the Confederate cruisers, for whose acts Great Britain was not held accountable under the decision of the Tribunal of Arbitration, but for payment of which out of the unexpended balance, provision was made under the Act of 1882.

The will of the deceased had left all his property to his widow for life. The heirs demand distribution to them, claiming the award was a pure gratuity, and was no part of the decedent's estate, and so did not pass to the widow under the will. The Court following Comegys *v.* Vasse, and the other cases overruled these claims and ordered distribution to the widow under the will.

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† Balch *v.* Blagge, 157 Mass., 144; Leffingwell's Appeal, 62 Conn., 347; Codman *v.* Brooks, 159 Mass., 477.

A consideration of some authorities said to be opposed to our contention.

The case of Gillan *vs.* Gillan, 55 Penn. St., 430, has sometimes been cited as sustaining the theory of bounty.

The facts briefly are these: An appropriation of $500,000 was made by the Pennsylvania legislature for the relief of citizens of Chambersburg and vicinity whose houses had been burned by the insurgents during the invasion of that State in July, 1864.

In the *pro rata* disbursement of this appropriation among the sufferers the State had paid some $1,800 to the administrator of one Gillan on account of the burning of a house belonging to the estate. The administrator brought an amicable suit in order to have it determined whether he should pay the sum to the widow and child of the deceased, or apply the same in the discharge of certain liens upon the property. The Court holding the money to be a pure gratuity on the part of the State, as it clearly was, ordered it paid to the widow and guardian.

In the opinion the Court say:

> "It was not a case in which the State was bound to indemnify the sufferers. Losses by public enemies,—the casualties of war,—are risks that every one in society assumes and must bear. Property destroyed by such exigencies is not like

> property taken by the State. There the money becomes the substitute for the property, and the lien attaches to the substitute. But no such principles are applicable to a case of mere gratuity."

It should also be noticed that the question was not of the *distribution of an estate.* There was no order of the *Probate Court* respecting the distribution of the fund, and no one pretended to regard it as a part of the decedent's estate. The question arose upon "an amicable action of assumpsit to the Court of Common Pleas."

The question involved in this contention has been twice before the Supreme Court of Pennsylvania and there decided both ways. First, in Clement's Estate, Scott's Appeal, 150 Penn. St., 85, it was held on appeal from a decree of the Orphans Court of Philadelphia ordering a distribution on the theory of gratuity to the living next of kin, that such order was erroneous. This first opinion of the Pennsylvania Court is based upon the idea of the obligation of the United States, and speaks of Congress appropriating money "to pay the findings of the Court of Claims," and intending thereby "something more than a mere gratuity."

Within less than two years the question was again before the Court, on another appellant's appeal from the order of distribution of the Orphans Court passed in the matter of the same estate pursuant to this opinion. There

had been but two changes on the bench composed of seven Judges. On this second consideration of the question, Clement's Estate, Bailey's Appeal, 160 Penn. St., 391, the Court overruled its former decision and decided in favor of living next of kin. An examination of the opinion rendered in the latter case will fail to disclose any sufficient reasons assigned for the new conclusions reached. In the earlier opinion it appears that due consideration was given to the "proviso" and the gratuity theory, and neither seemed to embarrass the Court in reaching its conclusion. In the later opinion an apology or explanation is attempted in these words: "This case," says the opinion, "has suffered somewhat from its unusual character," and again, "further consideration and better acquaintance with the whole case has convinced us that our first views, as expressed in 150 Penn. St., 85, are not sustainable and that that case must be overruled." The opinion gives no evidence, however, of any "better acquaintance with the whole case." Even Gardner *vs.* Clark, *infra*, is not referred to as sustaining the new conclusions reached. At the time of this decision, Balch *vs.* Blaggs, and Codman *vs.* Brooks, had been decided by the Supreme Judicial Court of Massachusetts, and Leffingwell's Appeal by the Supreme Court of Errors of Connecticut, and could have been found in the reports. And yet no mention is made of either of these decisions, all of which evince a most thorough discussion and consideration of the question, and refer with respectful approval to the first decision

of the Supreme Court of Pennsylvania in the Clement case.

The Pennsylvania Judges, in substance, concede that when this case, with its "unusual character," was first before them they gave it but superficial consideration, and did not become fully "acquainted" with it. Their later opinion gives no evidence of deeper research. They turn the case over on the gratuity theory alone, and this theory we submit is exploded by an unbroken line of decisions of this Court, and by the application of sound reasoning to the facts and history of the case.

The only case opposed to our contention which seems to us to require any extended consideration is Gardner, Adm., *vs.* Clarke, Adm., 20 Dist. of Col. R., 261.

The case may be stated as follows:

The original owner, Caleb Gardner, by his last will and testament, bequeathed all the residue of his estate equally to two sons and two daughters, and this fund fell into such residue. One of the daughters died without children, leaving a will by which she gave the whole of her estate to her two brothers, leaving out her sister.

The contest arose over the share of this daughter, who had so left her property by will.

The administrator had paid one-fourth of the sum to the administrator of the other sister, and it is not readily seen how on the general theory of the decision payment could have been made to any administrator. If living

next of kin only can take, how can the administrator of a descendant of the original owner take?

Apart from this the question was who was to take the one-fourth, which the sister who had died childless had left to her two brothers to the exclusion of her sister?

It is seen that the estates of the two brothers would each have had one-third of the fourth share (one-third to each of them, and the other third to their sister), if the sister had died intestate, and the question was whether such estates took one-third or one-half. If the will took effect these estates had the whole of this one-fourth share, each taking one-half; if the will did not take effect these estates each took one-third, the estate of the disinherited sister taking the other third.

There is no doubt that the reasoning of the Court is to the effect that the payment of the French Spoliation Claiams was on the theory of bounty, and if this theory fails the decision fails also. The Court carries the matter so far as to say that

> "if Congress has not appropriated the moneys to the persons *really entitled to them*, all that follows is that their claims have not been satisfied by the appropriation and still remain unsettled."

The theory of the Court seems to be that the ninety years of debate upon the point that these were valid claims in the nature of property, and should be paid as such, still remains unsettled, though decided to be valid by the Court of Claims; that Congress has not paid any money in *settle-*

ment of these claims, if they exist, though it had been adjudicated that they were valid claims and ought to be paid; that Congress has simply paid over some money to the living next of kin, irrespective of the question whether the original owners had any just claims against the Government. It seems to us that reasoning like this needs no refutation.

There was, however, a most singular conclusion to this case. We have examined the original files in the office of the Clerk of the Supreme Court for the District of Columbia, and the decree as first drawn provides that the funds, to wit: the one-fourth share, were to be distributed "to the next of kin of Caleb Gardner existing at the date of the approval of the Appropriation Act, to wit: March 3d, 1891."

There was a petition for a re-hearing, in which the counsel for the petition said:

> "In said decision, the Court holds that the claims known as the French Spoliation claims, are not just claims against the Government of the United States, and that the appropriation in this case and consequently in others made in the same act amounting in the aggregate to one million, three hundred and four thousand and ninety-five dollars and thirty-seven cents ($1,304,095.37), were gratuities or gifts to the next of kin of certain persons."
>
> "Said decision is in conflict with a long line of decisions made by the United States Court of Claims, the first of which was made after elaborate argument by eminent counsel appearing for the claimants and by the Solicitor General and other

able counsel for the United States, and who occupied three weeks of time of that Court.

"It is based upon a ground not mentioned in any of the many debates had upon the merits of these claims in Congress where the opposition has been vigorous, but based chiefly upon disputed questions of international law and facts in diplomatic history. It is submitted that the Court should not infer that Congress gave any money *collected from the whole people to a favored few*, or by its opinion prejudice the consideration of claims amounting to several million dollars or more now pending in the Court of Claims unless such conclusion is irresistible. It is within the knowledge of the Courts, derived from public records, that large sums of money have been expended by the Government in defending these claims and in collecting evidence concerning them — money uselessly expended in resisting a request for a gratuity.

"For the above mentioned considerations, showing the far-reaching consequence of the decision, your petitioner requests the Court, out of its discretion, to grant a re-hearing before a full Bench and also for the following specific reasons, viz.:

1. The case was insufficiently argued, *and the point on which the decision rests was barely referred to at all.*

2. The proviso of the Act on which the decision is based relates solely to the regulations of the Treasury Department and the Court of Claims in making payment of the sums appropriated, and in no way relates to the distribution of such sums after they have left the Treasury."

The petition for a re-hearing was denied, it seems, without argument, *but the final decree was materially modified*

The final decree provided that the plaintiff, who was the administrator with the will annexed of Caleb Gardner, should "pay over the funds in his hands, after deducting the expense of this suit, in three equal shares, to William F. Gardner, administrator of William Gardner, Nannie F. Gardner, administratrix of Samuel F. Gardner, and H. Audley Clarke, administrator of Mary Clarke, they *being the representatives of the next of kin of the said Caleb Gardner*." They were the administrators and so representatives of the next of kin.

William Gardner and Samuel Gardner were the sons of Caleb Gardner, and Mary Clarke was the daughter of Caleb Gardner.

Mrs. Phillips was the other daughter of Caleb Gardner, whose will had excluded her half sister, Mrs. Clarke.

The record shows that there was in Court an administrator with the will annexed of Mrs. Phillips.

Now, this final decree recognized that the two sons and one daughter of Caleb Gardner were the "next of kin of said Caleb Gardner," the original owner of the claim, for such is the final decree of the Court in this celebrated case.

So that our contention that the next of kin in the second clause of the famous proviso are the persons who were the next of kin of the original owner at his decease is confirmed by the text of this decree.

How it was possible, when the money had been paid into the hands of these administrators of these three next

of kin of Caleb Gardner, that it could fail to be afterwards distributed according to the law of ownership is past all comprehension.

How it was possible for the judicial mind to see that the administrators of three of the children of Caleb Gardner were as such representatives of the next of kin of said Caleb Gardner and fail to see that the administrator of the other daughter and remaining child of Caleb Gardner was not as such a representative of the next of kin of Caleb Gardner equally passes all comprehension.

The next of kin of Caleb Gardner were his four children, and the administrator of one stood in the same right as the administrator of another in representing next of kin of Caleb Gardner.

If it be said that the administrators of three of the children represented the next of kin of Caleb Gardner, meaning *living* next of kin, because there were descendants from each of these three lines, then how was it possible, on this theory, for the Court to order the administrator of Caleb Gardner to pay to the administrators of these *three of Caleb Gardner's children.*

On the theory of the Court, the administrator of Caleb Gardner received the money only because *he* represented the next of kin of Caleb Gardner, meaning *living* next of kin, and so he should have been ordered to pay to *living* next of kin.

But the administrator of Caleb Gardner was ordered to pay to the administrators of the three children and not

to the administrator of the fourth child because, as the Court say, the administrators of the three children who left issue are the representatives of the next of kin of Caleb Gardner; and *if that was so, how was it possible for the Court of Claims to have certified that the administrator of Caleb Gardner represented next of kin?*

In this case the judicial mind seems to have reached the result that the certificate of the Court of Claims was erroneous.

That Court had certified that the administrator of Caleb Gardner represented next of kin of Caleb Gardner, and the District of Columbia Court has reached the conclusion that the administrators of Caleb Gardner's two sons and one daughter are the representatives of Caleb Gardner's next of kin.

It must be confessed that there is no logic nor sound reason in the final decree of the Court, and that when the Court was brought to the test question, to whom the administrator of Caleb Gardner should pay the fund, it was obliged to say that the administrator of Caleb Gardner must pay to those who represented the estates of the persons who were the next of kin to Caleb Gardner at his death, and how the Court could issue this order directing the administrator of Caleb Gardner to pay to the administrators of three of such next of kin, and not to the administrator of the fourth, remains to be explained. The administrator of Caleb Gardner stood in exactly the same legal relation to the administrators of each of his children.

There was not a great amount of difference as to whether the two brothers each took one-half or one-third of this one-fourth share, and therefore this case, which was not argued at all on the points now involved, is hardly an authority to be followed in this controversy.

It happened to lead off and to have produced some impression because it was the first case in the field.

This decision would cause a distribution to the administrator of Caroline Street of one-third of the residue; for Caroline Street leaves issue, and so her case is exactly like the decision in Gardner *vs.* Clarke.

If one-third of the residue is paid to the administrator of Caroline Street, it will become part of her estate; if part of her estate it will be disposed of by her will; if so the plaintiffs in error will have nothing to do with Gardner *vs.* Clarke.

In truth the final decree in Gardner *vs.* Clarke is not only inconsistent with itself, but "hoists" the opinion upon which the decree purports to rest.

This decision was followed by the Circuit Court in Baltimore, Md., in a suit brought in the nature of a bill of interpleader respecting a fund in the hands of an administrator, which had been collected by him upon one of these awards, Cary, Adm'r, *vs.* Morris, *et al.*, Legal Int., April 8th, 1892. This decision gave the fund to the living next of kin, following what it concluded to be the intent of Congress in the proviso. The opinion says if is entirely immaterial whether Congress intended to pay a

claim or make a present. The value of this decision is thus shown to be worthless by this admission.

THE CONCLUSION.

The pith of the whole matter can be thus stated.

By decisions of the United States Supreme Court, and of other Courts in this country, claims of this class, however contingent, however peculiar, were *rights of property*, belonging to the original owners of the ship and cargo seized, confiscated or destroyed.

Paragraph 3 of the Reasons of Appeal:* the certificates issued by the Court of Claims; the whole course of events; demonstrates that *these claims* were presented as *rights of property.*

Now, if the United States has not paid these claims to the owners of them, it has not paid them at all.

Handing over money to some person of the blood of William Leffingwell, but who has no title or interest in his property, is *not paying a claim or satisfying a right of property owned by William Leffingwell.*

The opening sentence of the Appropriation Act declares that the appropriations are made "to *pay* the findings of the Court of Claims, on the following claims," etc.

The intent is not only to *pay* the claims, but to pay them according to the *findings*,—to the legal owners.

They could be *paid* to no other parties.

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* Record, pages 4 and 5, folio 6.

The Reasons of Appeal state that the appropriation was to *pay* this claim, which was *owned* by the firm of Leffingwell & Pierrepont.

The certificate was that Hezekiah B. Pierrepont was the "owner" of the claim.

The Treasury Department treated the United States as *indebted* to the estate of Hezekiah B. Pierrepont, and paid over the money in the *discharge of the indebtedness*, and in discharge of nothing else.

It is to be inquired what Congress *did*, not what it might have done, and we assert that when the money left the Treasury, in these matters, it went to *pay* claims and not to leave them unpaid.

If Congress intended to pay the claim, *its owners must have the money.*

A Congressional largess is an extraordinary thing, at least in legal theory, but it is more extraordinary to claim that a debtor pays a debt by paying money to some person who has no title to it, and refusing the money to the persons who have the title to it.

A debtor may refuse to pay at all, and if there is no law to compel him to pay, there is the end of the matter.

When the debtor says "I won't pay this claim, unless I am satisfied that such and such persons are the equitable owners of it, but if I am so satisfied, I will pay it," there is not the slightest intention, expectation, or supposition that there is any interference with the rules of ownership.

It makes no difference if it shall turn out that, by the

rules of ownership, some persons are owners whom the debtor did not suppose would be such.

The debtor put up such safeguards to guide him whether to pay the claim or not pay it, as he saw fit, but when those conditions had been complied with, to his satisfaction, and the debtor paid the claim, its owners would get the money, and no other person would or could have any right to it.

If those conditions were not complied with, the debtor would not pay the claim at all.

The conduct of Congress, in striking out the awards to administrators of assignees in bankruptcy, is conclusive that Congress intended to make no donation to anybody.

Although it might and probably would turn out, that the payments to the administrator of such assignee would result, there being no creditors found, in legal distribution to the heirs, yet such a transaction might be regarded as looking like depriving the legal owner, and handing over the fund to a party not apparently the legal owner.

In other words, such a transaction might look like a donation.

After all, the true theory of the action of the United States in 1885 and 1891, concerning these claims, was that the honor of the nation would not tolerate the *repudiation of just and valid* claims. The sense of *justice* of the United States was appealed to. In the present generation, there is no particular merit in any recipient of these funds. They are paid because the honor of the nation demands

their payment, and paid, if paid at all, to the legal representative, who has given bond for the legal distribution of the awards.

Congress not only imposes no stamp or trust, of its own, on this money after it is paid, but expressly and unequivocally demands its legal distribution according to ownership.

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